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*** OCT 28 2016**
BROOKLYN OFFICE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

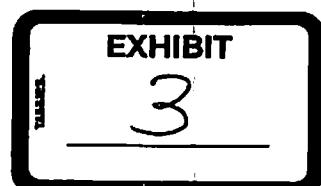
UNITED STATES OF AMERICA, :
X
-against- :
DARIUS XAVIER JOHNSON, :
Defendant. :
X

FINAL JURY CHARGE

15 Crim. 227 (ENV)

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PRELIMINARY INSTRUCTIONS

**MEMBERS OF THE JURY, NOW THAT THE EVIDENCE
IN THIS CASE HAS BEEN PRESENTED, IT IS MY
RESPONSIBILITY TO INSTRUCT YOU AS TO THE LAW
THAT GOVERNS THIS CASE. BEFORE I DO SO, I WANT TO
THANK YOU FOR YOUR PATIENCE AND COOPERATION.**

MY INSTRUCTIONS WILL BE IN THREE PARTS:

**FIRST: I WILL INSTRUCT YOU REGARDING THE
GENERAL RULES THAT DEFINE AND GOVERN THE DUTIES
OF A JURY IN A CRIMINAL CASE;**

**SECOND: I WILL INSTRUCT YOU AS TO THE LEGAL
ELEMENTS OF THE CRIMES CHARGED IN THE
INDICTMENT, THAT IS, THE SPECIFIC ELEMENTS THAT
THE GOVERNMENT MUST PROVE BEYOND A**

REASONABLE DOUBT TO WARRANT A FINDING OF GUILT;

AND

THIRD: I WILL GIVE YOU SOME GENERAL RULES
REGARDING YOUR DELIBERATIONS.

THE DUTIES OF THE JURY

**YOU HAVE NOW HEARD ALL OF THE EVIDENCE IN
THE CASE.**

**IT IS YOUR DUTY TO FIND THE FACTS FROM ALL THE
EVIDENCE IN THIS CASE. YOU ARE THE SOLE JUDGES OF
THE FACTS, AND IT IS, THEREFORE, FOR YOU AND YOU
ALONE TO PASS UPON THE WEIGHT OF THE EVIDENCE;
TO RESOLVE SUCH CONFLICTS AS MAY HAVE APPEARED
IN THE EVIDENCE; AND TO DRAW SUCH INFERENCES AS
YOU DEEM TO BE REASONABLE AND WARRANTED FROM
THE EVIDENCE OR LACK OF EVIDENCE IN THIS CASE.**

**WITH RESPECT TO ANY QUESTION CONCERNING THE
FACTS, IT IS YOUR RECOLLECTION OF THE EVIDENCE
THAT CONTROLS.**

**TO THE FACTS AS YOU FIND THEM, YOU MUST APPLY
THE LAW IN ACCORDANCE WITH MY INSTRUCTIONS.**

**WHILE THE LAWYERS MAY HAVE COMMENTED ON SOME
OF THESE LEGAL RULES, YOU MUST BE GUIDED ONLY BY
WHAT I INSTRUCT YOU ABOUT THEM. YOU MUST
FOLLOW ALL THE RULES AS I EXPLAIN THEM TO YOU.**

**YOU MAY NOT FOLLOW SOME AND IGNORE OTHERS;
EVEN IF YOU DISAGREE WITH OR DO NOT UNDERSTAND
THE REASONS FOR SOME OF THE RULES, YOU ARE BOUND
TO FOLLOW THEM.**

**I EXPRESS NO VIEW WHETHER THE DEFENDANT IS
GUILTY OR NOT GUILTY OR AS TO ANY FACT. YOU
SHOULD NOT DRAW ANY INFERENCE OR REACH ANY
CONCLUSION AS TO WHETHER THE DEFENDANT IS**

**GUILTY OR NOT GUILTY FROM ANYTHING I MAY HAVE
SAID OR DONE. YOU WILL DECIDE THE CASE SOLELY ON
THE FACTS YOU FIND AND THE LAW AS I GIVE IT TO YOU.**

PARTIES ARE EQUAL BEFORE THE COURT

IN REACHING YOUR VERDICT, YOU ARE TO

PERFORM THE DUTY OF FINDING THE FACTS WITHOUT

BIAS OR PREJUDICE AS TO ANY PARTY. YOU MUST

REMEMBER THAT ALL PARTIES STAND EQUAL BEFORE A

JURY IN THE COURTS OF THE UNITED STATES. THE FACT

THAT THE GOVERNMENT IS A PARTY AND THE

PROSECUTION IS BROUGHT IN THE NAME OF THE UNITED

STATES DOES NOT ENTITLE THE GOVERNMENT OR ITS

WITNESSES TO ANY GREATER CONSIDERATION THAN

THAT ACCORDED TO THE DEFENDANT. BY THE SAME

TOKEN, YOU MUST GIVE IT NO LESS CONSIDERATION.

YOUR VERDICT MUST BE BASED SOLELY ON THE

EVIDENCE OR LACK OF EVIDENCE.

**FOR THE SAME REASONS, THE PERSONALITIES AND
THE CONDUCT OF COUNSEL ARE NOT IN ANY WAY IN
ISSUE. IF YOU FORMED REACTIONS OF ANY KIND TO ANY
OF THE LAWYERS IN THE CASE, FAVORABLE OR
UNFAVORABLE, WHETHER YOU APPROVED OR
DISAPPROVED OF THEIR BEHAVIOR, THOSE REACTIONS
MUST NOT ENTER INTO YOUR DELIBERATIONS.**

PRESUMPTION OF INNOCENCE

**THE INDICTMENT THAT WAS FILED AGAINST THE
DEFENDANT IS THE MEANS BY WHICH THE GOVERNMENT
GIVES THE DEFENDANT NOTICE OF THE CHARGES
AGAINST HIM AND BRINGS HIM BEFORE THE COURT. THE
INDICTMENT IS AN ACCUSATION AND NOTHING MORE.**

**THE INDICTMENT IS NOT EVIDENCE AND YOU ARE TO
GIVE IT NO WEIGHT IN ARRIVING AT YOUR VERDICT.**

**THE DEFENDANT, IN RESPONSE TO THE INDICTMENT,
PLEADED "NOT GUILTY." A DEFENDANT IS PRESUMED TO
BE INNOCENT UNLESS HIS GUILT HAS BEEN PROVEN
BEYOND A REASONABLE DOUBT, AND THAT
PRESUMPTION ALONE, UNLESS OVERCOME, IS
SUFFICIENT TO ACQUIT HIM. THE DEFENDANT IS ON**

**TRIAL FOR THE CRIMES CHARGED AGAINST HIM IN THE
INDICTMENT AND NOT FOR ANYTHING ELSE.**

BURDEN OF PROOF

**THE GOVERNMENT HAS THE BURDEN – THAT IS, THE
OBLIGATION – OF PROVING GUILT BEYOND A
REASONABLE DOUBT. THIS BURDEN NEVER SHIFTS TO
THE DEFENDANT. THE DEFENDANT DOES NOT HAVE TO
PROVE HIS INNOCENCE; HE NEED NOT SUBMIT ANY
EVIDENCE AT ALL.**

REASONABLE DOUBT

SINCE, IN ORDER TO CONVICT THE DEFENDANT OF A GIVEN CHARGE, THE GOVERNMENT IS REQUIRED TO PROVE THAT CHARGE BEYOND A REASONABLE DOUBT, THE QUESTION THEN IS: WHAT IS REASONABLE DOUBT? THE WORDS ALMOST DEFINE THEMSELVES. IT IS A DOUBT BASED UPON REASON. IT IS A DOUBT THAT A REASONABLE PERSON HAS AFTER CAREFULLY WEIGHING ALL OF THE EVIDENCE OR LACK OF EVIDENCE. IT IS A DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT IN A MATTER OF IMPORTANCE IN HIS OR HER PERSONAL LIFE. PROOF BEYOND A REASONABLE DOUBT MUST, THEREFORE, BE PROOF OF A CONVINCING CHARACTER

**THAT A REASONABLE PERSON WOULD NOT HESITATE TO
RELY UPON IN MAKING AN IMPORTANT DECISION.**

A REASONABLE DOUBT IS NOT CAPRICE OR WHIM.

IT IS NOT SPECULATION OR SUSPICION. IT IS NOT AN

EXCUSE TO AVOID THE PERFORMANCE OF AN

UNPLEASANT DUTY. THE LAW DOES NOT REQUIRE THAT

THE GOVERNMENT PROVE GUILT BEYOND ALL POSSIBLE

DOUBT: PROOF BEYOND A REASONABLE DOUBT IS

SUFFICIENT TO CONVICT.

IF, AFTER FAIR AND IMPARTIAL CONSIDERATION OF

THE EVIDENCE, YOU HAVE A REASONABLE DOUBT AS TO

THE DEFENDANT'S GUILT WITH RESPECT TO A

PARTICULAR CHARGE AGAINST HIM, YOU MUST FIND

THE DEFENDANT NOT GUILTY OF THAT CHARGE. ON THE

OTHER HAND, IF AFTER FAIR AND IMPARTIAL
CONSIDERATION OF ALL THE EVIDENCE, YOU ARE
SATISFIED BEYOND A REASONABLE DOUBT OF THE
DEFENDANT'S GUILT WITH RESPECT TO A PARTICULAR
CHARGE AGAINST HIM, YOU SHOULD FIND THE
DEFENDANT GUILTY OF THAT CHARGE.

EVIDENCE GENERALLY

**I WISH TO EXPAND NOW ON THE INSTRUCTIONS I
GAVE YOU AT THE BEGINNING OF THE TRIAL AS TO
WHAT IS EVIDENCE AND HOW YOU SHOULD CONSIDER IT.
EVIDENCE COMES IN SEVERAL FORMS, INCLUDING:**

- A. SWORN TESTIMONY OF WITNESSES, BOTH ON
DIRECT AND CROSS-EXAMINATION, AND REGARDLESS OF
WHO CALLED THE WITNESS;**
- B. EXHIBITS THAT HAVE BEEN RECEIVED IN
EVIDENCE BY THE COURT; AND**
- C. FACTS TO WHICH ALL THE LAWYERS HAVE
AGREED BY STIPULATION.**

STIPULATIONS

**WITH RESPECT TO STIPULATIONS, THE PARTIES
HAVE STIPULATED TO CERTAIN FACTS IN THIS CASE.
SUCH A STIPULATION IS AN AGREEMENT AMONG THE
PARTIES THAT A CERTAIN FACT IS TRUE. YOU MUST
CONSIDER SUCH STIPULATED FACTS AS TRUE.**

WHAT IS NOT EVIDENCE

**CERTAIN THINGS ARE NOT EVIDENCE AND ARE TO
BE DISREGARDED BY YOU IN DECIDING WHAT THE FACTS
ARE. THEY ARE AS FOLLOWS:**

**FIRST, ARGUMENTS OR STATEMENTS BY LAWYERS
ARE NOT EVIDENCE.**

**QUESTIONS PUT TO THE WITNESSES ARE NOT
EVIDENCE. IT IS THE QUESTION COMBINED WITH THE
ANSWER THAT IS EVIDENCE.**

**IN ADDITION TO THE LAWYERS' QUESTIONS, I
OCCASIONALLY MAY HAVE ASKED QUESTIONS FOR
PURPOSES OF CLARIFICATION. PLEASE DO NOT ASSUME
THAT THE QUESTIONS ARE EVIDENCE OR THAT I HOLD
ANY OPINION ON THE MATTERS TO WHICH ANY**

QUESTIONS MAY HAVE RELATED. I DO NOT. THOSE
QUESTIONS WERE ASKED SOLELY IN AN EFFORT OR
ATTEMPT TO MAKE SOMETHING CLEARER.

SIMILARLY, OBJECTIONS TO QUESTIONS OR TO
OFFERED EXHIBITS ARE NOT EVIDENCE. IN THIS
REGARD, ATTORNEYS HAVE A DUTY TO THEIR CLIENTS
TO OBJECT WHEN THEY BELIEVE EVIDENCE SHOULD
NOT BE RECEIVED. YOU SHOULD NOT BE INFLUENCED BY
THE OBJECTION OR BY THE COURT'S RULING ON IT. IF
THE OBJECTION WAS SUSTAINED, IGNORE THE
QUESTION. IF THE OBJECTION WAS OVERRULED, TREAT
THE ANSWER LIKE ANY OTHER ANSWER.

**OF COURSE, TESTIMONY THAT HAS BEEN STRICKEN
OR THAT YOU HAVE BEEN INSTRUCTED TO DISREGARD IS
NOT EVIDENCE, AND MUST BE DISREGARDED.**

**EQUALLY OBVIOUS, ANYTHING YOU MAY HAVE SEEN
OR HEARD OUTSIDE THE COURTROOM IS NOT EVIDENCE.**

**FINALLY, IT WOULD BE IMPROPER FOR YOU TO
CONSIDER, IN REACHING YOUR DECISION AS TO
WHETHER THE GOVERNMENT SUSTAINED ITS BURDEN OF
PROOF, ANY PERSONAL FEELINGS YOU MAY HAVE ABOUT
THE DEFENDANT'S RACE, RELIGION, NATIONAL ORIGIN,
ETHNIC BACKGROUND, SEX, OR AGE. ALL PERSONS ARE
ENTITLED TO THE PRESUMPTION OF INNOCENCE AND
THE GOVERNMENT HAS THE SAME BURDEN OF PROOF.
IN ADDITION, IT WOULD BE EQUALLY IMPROPER FOR**

**YOU TO ALLOW ANY FEELINGS YOU MIGHT HAVE ABOUT
THE GOVERNMENT OF THE UNITED STATES OR THE
NATURE OF THE CRIME CHARGED TO INTERFERE WITH
YOUR DECISION-MAKING PROCESS.**

**TO REPEAT, YOUR VERDICT MUST BE BASED
EXCLUSIVELY UPON THE EVIDENCE OR THE LACK OF
EVIDENCE IN THE CASE.**

CHARTS AND SUMMARIES

**THE PARTIES HAVE PRESENTED EXHIBITS IN THE
FORM OF CHARTS AND SUMMARIES. I DECIDED TO
ADMIT THESE CHARTS AND SUMMARIES IN PLACE OF
THE UNDERLYING DOCUMENTS THAT THEY REPRESENT
IN ORDER TO SAVE TIME AND AVOID UNNECESSARY
INCONVENIENCE. YOU SHOULD CONSIDER THESE
CHARTS AND SUMMARIES AS YOU WOULD ANY OTHER
EVIDENCE.**

DIRECT AND CIRCUMSTANTIAL EVIDENCE

I TOLD YOU THAT EVIDENCE COMES IN VARIOUS FORMS SUCH AS THE SWORN TESTIMONY OF WITNESSES, EXHIBITS, AND STIPULATIONS.

THERE ARE, IN ADDITION, DIFFERENT KINDS OF EVIDENCE -- DIRECT AND CIRCUMSTANTIAL.

DIRECT EVIDENCE IS THE COMMUNICATION OF A FACT BY A WITNESS, WHO TESTIFIED TO THE KNOWLEDGE OF THAT FACT AS HAVING BEEN OBTAINED THROUGH ONE OF THE FIVE SENSES. SO, FOR EXAMPLE, A WITNESS WHO TESTIFIED TO KNOWLEDGE OF A FACT BECAUSE HE SAW IT, HEARD IT, SMELLED IT, TASTED IT, OR TOUCHED IT IS GIVING EVIDENCE WHICH IS DIRECT. WHAT REMAINS IS YOUR RESPONSIBILITY TO PASS UPON

**THE CREDIBILITY OF THE TESTIMONY THAT WITNESS
GAVE.**

**CIRCUMSTANTIAL EVIDENCE IS EVIDENCE WHICH
TENDS TO PROVE A FACT IN ISSUE BY PROOF OF OTHER
FACTS FROM WHICH THE FACT IN ISSUE MAY BE
INFERRED.**

**THE WORD “INFER” – OR THE EXPRESSION “TO
DRAW AN INFERENCE” -- MEANS TO FIND THAT A FACT
EXISTS FROM PROOF OF ANOTHER FACT. FOR EXAMPLE,
IF A FACT IN ISSUE IS WHETHER IT IS RAINING AT THE
MOMENT, NONE OF US CAN TESTIFY DIRECTLY TO THAT
FACT SITTING AS WE ARE IN WHAT IS AN ESSENTIALLY
WINDOWLESS COURTROOM. ASSUME, HOWEVER, THAT
AS WE ARE SITTING HERE, A PERSON WALKS INTO THE**

COURTROOM WEARING A RAINCOAT THAT IS DRIPPING
WET AND CARRYING AN UMBRELLA THAT IS DRIPPING
WATER. WE MAY INFER FROM THOSE FACTS THAT IT IS
RAINING OUTSIDE. IN OTHER WORDS, THE FACT OF RAIN
IS AN INFERENCE THAT COULD BE DRAWN FROM THE
WET RAINCOAT AND THE DRIPPING UMBRELLA.

HOWEVER, FROM THE DIRECT EVIDENCE OF YOUR
OBSERVATION OF A PERSON ENTERING THE
COURTROOM WEARING A WET RAINCOAT AND
CARRYING A WET UMBRELLA ALONE, YOU COULD NOT
INFER EXACTLY WHEN THE RAIN HAD STARTED OR FOR
HOW LONG IT HAD RAINED.

AN INFERENCE IS TO BE DRAWN ONLY IF IT IS
LOGICAL AND REASONABLE TO DO SO. IN DECIDING

**WHETHER TO DRAW AN INFERENCE, YOU MUST LOOK AT
AND CONSIDER ALL THE FACTS IN THE LIGHT OF
REASON, COMMON SENSE, AND EXPERIENCE. WHETHER
A GIVEN INFERENCE IS OR IS NOT TO BE DRAWN IS
ENTIRELY A MATTER FOR YOU, THE JURY, TO DECIDE.
PLEASE BEAR IN MIND, HOWEVER, THAT AN INFERENCE
IS NOT TO BE DRAWN BY GUESSWORK OR SPECULATION.**

**I REMIND YOU ONCE AGAIN THAT YOU MAY NOT
CONVICT THE DEFENDANT UNLESS YOU ARE SATISFIED
OF HIS GUILT BEYOND A REASONABLE DOUBT, WHETHER
BASED ON DIRECT EVIDENCE, CIRCUMSTANTIAL
EVIDENCE, OR THE LOGICAL INFERENCES TO BE DRAWN
FROM SUCH EVIDENCE.**

**CIRCUMSTANTIAL EVIDENCE DOES NOT
NECESSARILY PROVE LESS THAN DIRECT EVIDENCE, NOR
DOES IT NECESSARILY PROVE MORE. YOU ARE TO
CONSIDER ALL THE EVIDENCE IN THE CASE, DIRECT AND
CIRCUMSTANTIAL, IN DETERMINING WHAT THE FACTS
ARE AND IN ARRIVING AT YOUR VERDICT.**

INFERENCES

I WILL NOW INSTRUCT YOU FURTHER ABOUT INFERENCES. DURING THE TRIAL, YOU MAY HAVE HEARD THE ATTORNEYS USE THE TERM "INFERENCE," AND IN THEIR ARGUMENTS THEY MAY HAVE ASKED YOU TO INFER, ON THE BASIS OF YOUR REASON, EXPERIENCE, AND COMMON SENSE, FROM ONE OR MORE PROVEN FACTS, THE EXISTENCE OF SOME OTHER FACTS.

WHETHER OR NOT THE LAWYERS ASKED YOU TO DRAW INFERENCES FROM THE EVIDENCE, YOU HAVE THE POWER TO DO SO. BUT, IN DRAWING INFERENCES, YOU MUST KEEP IN MIND THAT AN INFERENCE IS NOT A SUSPICION OR A GUESS. IT IS A LOGICAL CONCLUSION THAT A DISPUTED FACT EXISTS THAT WE REACH IN

**LIGHT OF ANOTHER FACT WHICH HAS BEEN SHOWN TO
EXIST. THERE ARE TIMES WHEN DIFFERENT INFERENCES
MAY BE DRAWN FROM FACTS, WHETHER PROVED BY
DIRECT OR CIRCUMSTANTIAL EVIDENCE. IT IS FOR YOU,
AND YOU ALONE, TO DECIDE WHAT INFERENCES, IF ANY,
YOU WILL DRAW.**

**KEEP IN MIND THAT THE MERE EXISTENCE OF AN
INFERENCE AGAINST THE DEFENDANT DOES NOT
RELIEVE THE GOVERNMENT OF THE BURDEN OF
ESTABLISHING ITS CASE BEYOND A REASONABLE DOUBT.**

IMPERMISSIBLE TO INFER GUILT FROM ASSOCIATION

**IN CONSIDERING INFERENCES, KEEP IN MIND THAT
YOU MAY NOT INFER THAT THE DEFENDANT IS GUILTY
OF CRIMINAL CONDUCT MERELY FROM THE FACT THAT
HE ASSOCIATED WITH OTHER PEOPLE WHO WERE
GUILTY OF WRONGDOING, OR THAT HE WAS PRESENT AT
THE TIME THAT CRIMINAL CONDUCT WAS BEING
COMMITTED, OR THAT HE HAD KNOWLEDGE THAT IT
WAS BEING COMMITTED.**

WEIGHING CREDIBILITY INCLUDING *FALSUS IN UNO*

**IN DECIDING WHAT THE FACTS ARE, YOU MUST
DECIDE WHICH TESTIMONY TO BELIEVE AND WHICH
TESTIMONY NOT TO BELIEVE. IN MAKING THAT
DECISION, YOU SHOULD USE THE SAME REASON YOU
WOULD EMPLOY IN MAKING DETERMINATIONS
IMPORTANT IN YOUR OWN AFFAIRS THAT ARE BASED ON
INFORMATION GIVEN TO YOU BY OTHERS. THERE ARE A
NUMBER OF FACTORS YOU MAY TAKE INTO ACCOUNT IN
DETERMINING WHETHER THE TESTIMONY OF A WITNESS
IS BELIEVABLE, INCLUDING THE FOLLOWING:**

(1) DID THE WITNESS IMPRESS YOU AS HONEST?

(2) DID THE WITNESS HAVE ANY PARTICULAR

REASON NOT TO TELL THE TRUTH?

(3) DID THE WITNESS HAVE A PERSONAL INTEREST

IN THE OUTCOME OF THE CASE?

(4) DID THE WITNESS SEEM TO HAVE A GOOD

MEMORY?

(5) DID THE WITNESS HAVE THE OPPORTUNITY AND

ABILITY TO OBSERVE ACCURATELY THE THINGS HE

TESTIFIED ABOUT?

(6) DID THE WITNESS APPEAR TO UNDERSTAND THE

QUESTIONS CLEARLY AND ANSWER THEM DIRECTLY?

(7) DID THE WITNESS'S TESTIMONY DIFFER FROM

THE TESTIMONY OF OTHER WITNESSES?

PEOPLE SOMETIMES FORGET THINGS. A

CONTRADICTION MAY BE AN INNOCENT LAPSE OF

MEMORY OR IT MAY BE AN INTENTIONAL FALSEHOOD.

CONSIDER, THEREFORE, WHETHER THE
CONTRADICTION, IF THERE WAS ONE, HAS TO DO WITH
AN IMPORTANT FACT, OR ONLY A SMALL DETAIL.

DIFFERENT PEOPLE OBSERVING AN EVENT MAY
REMEMBER IT DIFFERENTLY AND THEREFORE TESTIFY
ABOUT IT DIFFERENTLY.

BUT, IF ANY WITNESS IS SHOWN TO HAVE
WILLFULLY LIED ABOUT ANY MATERIAL MATTER, YOU
HAVE THE RIGHT TO CONCLUDE THAT THE WITNESS
ALSO LIED ABOUT OTHER MATTERS. YOU MAY EITHER
DISREGARD ALL OF THAT WITNESS'S TESTIMONY, OR
YOU MAY ACCEPT WHATEVER PART OF IT YOU THINK
DESERVES TO BE BELIEVED.

**YOU MAY CONSIDER THE FACTORS I HAVE JUST
DISCUSSED WITH YOU IN DECIDING HOW MUCH WEIGHT
TO GIVE TO TESTIMONY.**

PRIOR INCONSISTENT STATEMENTS

**YOU HAVE HEARD EVIDENCE THAT A WITNESS MADE
A STATEMENT ON AN EARLIER OCCASION WHICH
COUNSEL ARGUES IS INCONSISTENT WITH THE
WITNESS'S TRIAL TESTIMONY. EVIDENCE OF A PRIOR
INCONSISTENT STATEMENT IS NOT TO BE CONSIDERED
BY YOU AS AFFIRMATIVE EVIDENCE BEARING ON THE
DEFENDANT'S GUILT. EVIDENCE OF THE PRIOR
INCONSISTENT STATEMENT WAS PLACED BEFORE YOU
FOR THE MORE LIMITED PURPOSE OF HELPING YOU
DECIDE WHETHER TO BELIEVE THE TRIAL TESTIMONY
OF THE WITNESS WHO CONTRADICTED HIMSELF. IF YOU
FIND THAT THE WITNESS MADE AN EARLIER STATEMENT
THAT CONFLICTS WITH HIS TRIAL TESTIMONY, YOU MAY**

**CONSIDER THAT FACT IN DECIDING HOW MUCH OF HIS
TRIAL TESTIMONY, IF ANY, TO BELIEVE.**

**IN MAKING THIS DETERMINATION, YOU MAY
CONSIDER WHETHER THE WITNESS PURPOSELY MADE A
FALSE STATEMENT OR WHETHER IT WAS AN INNOCENT
MISTAKE; WHETHER THE INCONSISTENCY CONCERNED AN
IMPORTANT FACT, OR WHETHER IT HAD TO DO WITH A
SMALL DETAIL; WHETHER THE WITNESS HAD AN
EXPLANATION FOR THE INCONSISTENCY, AND WHETHER
THAT EXPLANATION APPEALED TO YOUR COMMON
SENSE.**

**IT IS EXCLUSIVELY YOUR DUTY, BASED UPON ALL
THE EVIDENCE AND YOUR OWN GOOD JUDGMENT, TO
DETERMINE WHETHER THE PRIOR STATEMENT WAS**

**INCONSISTENT, AND IF SO, HOW MUCH, IF ANY, WEIGHT
TO BE GIVEN TO THE INCONSISTENT STATEMENT IN
DETERMINING WHETHER TO BELIEVE ALL OR PART OF
THE WITNESS'S TESTIMONY.**

INTEREST IN OUTCOME

**IN EVALUATING CREDIBILITY OF THE WITNESSES,
YOU SHOULD TAKE INTO ACCOUNT ANY EVIDENCE THAT
THE WITNESS WHO TESTIFIED MAY BENEFIT IN SOME
WAY FROM THE OUTCOME OF THIS CASE. SUCH AN
INTEREST IN THE OUTCOME CREATES A MOTIVE TO
TESTIFY FALSELY AND MAY SWAY THE WITNESS TO
TESTIFY IN A WAY THAT ADVANCES HIS OWN INTERESTS.
THEREFORE, IF YOU FIND THAT ANY WITNESS WHOSE
TESTIMONY YOU ARE CONSIDERING MAY HAVE AN
INTEREST IN THE OUTCOME OF THIS TRIAL, THEN YOU
SHOULD BEAR THAT FACTOR IN MIND WHEN
EVALUATING THE CREDIBILITY OF HIS OR HER
TESTIMONY AND ACCEPT IT WITH GREAT CARE.**

**THIS IS NOT TO SUGGEST THAT EVERY WITNESS
WHO HAS AN INTEREST IN THE OUTCOME OF A CASE
WILL TESTIFY FALSELY. IT IS FOR YOU TO DECIDE TO
WHAT EXTENT, IF AT ALL, A WITNESS' INTEREST HAS
AFFECTED OR COLORED HIS OR HER TESTIMONY.**

[INTENTIONALLY LEFT BLANK]

TESTIMONY OF DEFENDANT

**IN A CRIMINAL CASE, THE DEFENDANT CANNOT BE
REQUIRED TO TESTIFY, BUT, IF THE DEFENDANT
CHOOSSES TO TESTIFY, HE IS, OF COURSE, PERMITTED TO
TAKE THE WITNESS STAND ON HIS OWN BEHALF. YOU
SHOULD EXAMINE AND EVALUATE THE DEFENDANT'S
TESTIMONY JUST AS YOU WOULD THE TESTIMONY OF
ANY WITNESS WITH AN INTEREST IN THE OUTCOME OF
THIS CASE. YOU SHOULD NOT DISREGARD OR
DISBELIEVE THE DEFENDANT'S TESTIMONY SIMPLY
BECAUSE HE IS CHARGED AS THE DEFENDANT IN THIS
CASE.**

DEFENDANT'S REPUTATION AND CHARACTER

THE DEFENDANT HAS CALLED WITNESSES WHO HAVE TESTIFIED TO HIS GOOD REPUTATION IN THE COMMUNITY AND GOOD CHARACTER. THIS TESTIMONY IS NOT TO BE TAKEN BY YOU AS THE WITNESS'S OPINION AS TO WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY. THAT QUESTION IS FOR YOU ALONE TO DETERMINE. YOU SHOULD, HOWEVER, CONSIDER THIS REPUTATION AND CHARACTER EVIDENCE TOGETHER WITH ALL THE OTHER FACTS AND ALL OTHER EVIDENCE IN THE CASE IN DETERMINING WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY OF THE CHARGES.

SUCH CHARACTER EVIDENCE ALONE MAY INDICATE TO YOU THAT IT IS IMPROBABLE THAT A PERSON OF GOOD REPUTATION WOULD COMMIT THE OFFENSES CHARGED. ACCORDINGLY, IF, AFTER

CONSIDERING THE QUESTION OF THE DEFENDANT'S
GOOD REPUTATION AND CHARACTER, YOU FIND THAT A
REASONABLE DOUBT HAS BEEN CREATED, YOU MUST
ACQUIT HIM OF ALL THE CHARGES.

ON THE OTHER HAND, IF AFTER CONSIDERING
ALL THE EVIDENCE INCLUDING THAT OF DEFENDANT'S
REPUTATION AND CHARACTER, YOU ARE SATISFIED
BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
IS GUILTY, YOU SHOULD NOT ACQUIT THE DEFENDANT
MERELY BECAUSE YOU BELIEVE HIM TO BE A PERSON OF
GOOD CHARACTER OR REPUTATION.

LAW ENFORCEMENT EMPLOYEE TESTIMONY

**DURING THIS TRIAL, YOU HAVE HEARD THE
TESTIMONY OF LAW ENFORCEMENT EMPLOYEES. THE
FACT THAT A WITNESS IS A LAW ENFORCEMENT
EMPLOYEE DOES NOT MEAN THAT HIS OR HER
TESTIMONY IS ENTITLED TO ANY GREATER WEIGHT. BY
THE SAME TOKEN, THE TESTIMONY OF SUCH A WITNESS
IS NOT ENTITLED TO LESS CONSIDERATION FOR THAT
REASON.**

**AT THE SAME TIME, IT IS QUITE LEGITIMATE FOR
DEFENSE COUNSEL TO TRY TO ATTACK THE
CREDIBILITY OF A LAW ENFORCEMENT WITNESS ON THE
GROUNDS THAT HIS OR HER TESTIMONY MAY BE**

**COLORED BY A PERSONAL OR PROFESSIONAL INTEREST
IN THE OUTCOME OF THE CASE.**

**YOU SHOULD CONSIDER THE TESTIMONY OF A LAW
ENFORCEMENT EMPLOYEE JUST AS YOU WOULD ANY
OTHER EVIDENCE IN THE CASE AND EVALUATE HIS OR
HER CREDIBILITY JUST AS YOU WOULD THAT OF ANY
OTHER WITNESS. AFTER REVIEWING ALL THE
EVIDENCE, YOU WILL DECIDE WHETHER TO ACCEPT THE
TESTIMONY OF A LAW ENFORCEMENT EMPLOYEE, AND
WHAT WEIGHT, IF ANY, THAT TESTIMONY DESERVES.**

ALL AVAILABLE EVIDENCE NEED NOT BE PRODUCED

**THE LAW DOES NOT REQUIRE ANY PARTY TO CALL
AS WITNESSES ALL PERSONS WHO MAY HAVE BEEN
PRESENT AT ANY TIME OR PLACE INVOLVED IN THE
CASE, OR WHO MAY APPEAR TO HAVE SOME
KNOWLEDGE OF THE MATTER IN ISSUE AT THIS TRIAL.
NOR DOES THE LAW REQUIRE ANY PARTY TO PRODUCE
AS EXHIBITS ALL PAPERS AND THINGS MENTIONED
DURING THE COURSE OF THE TRIAL. AND, OF COURSE, A
DEFENDANT IN A CRIMINAL CASE IS NOT REQUIRED TO
CALL ANY WITNESSES OR PRODUCE ANY EVIDENCE AT
ALL.**

INTERVIEWED WITNESSES

**DURING THE COURSE OF TRIAL YOU HEARD
TESTIMONY THAT ATTORNEYS INTERVIEWED
WITNESSES WHEN PREPARING FOR AND DURING THE
TRIAL. YOU MUST NOT DRAW ANY UNFAVORABLE
INFERENCE FROM THAT FACT.**

**ON THE CONTRARY, ATTORNEYS ARE OBLIGED TO
PREPARE THEIR CASE AS THOROUGHLY AS POSSIBLE,
AND IN THE DISCHARGE OF THAT RESPONSIBILITY,
PROPERLY INTERVIEW WITNESSES IN PREPARATION FOR
THE TRIAL AND FROM TIME TO TIME AS MAY BE
REQUIRED DURING THE COURSE OF TRIAL.**

NUMBER OF WITNESSES

AND UNCONTRADICTED TESTIMONY

**THE FACT THAT ONE SIDE OR THE OTHER CALLED
MORE WITNESSES OR INTRODUCED MORE EVIDENCE
DOES NOT MEAN THAT YOU SHOULD FIND THE FACTS IN
FAVOR OF THE SIDE WHO CALLED MORE
WITNESSES. YOU MUST NOT PERMIT THE NUMBER OF
WITNESSES OR DOCUMENTS SUPPLIED OR THE AMOUNT
OF TIME TAKEN IN EXAMINING A WITNESS TO
OVERWHELM YOUR JUDGMENT. THE WEIGHT OF THE
EVIDENCE IS BY NO MEANS DETERMINED BY THE
NUMBER OF WITNESSES OR THE LENGTH OF THEIR
TESTIMONY OR THE QUANTITY OF DOCUMENTS. YOU
MUST KEEP IN MIND THAT THE BURDEN OF PROOF IS**

**ALWAYS ON THE GOVERNMENT AND A DEFENDANT IS
NOT REQUIRED TO CALL ANY WITNESS OR OFFER ANY
EVIDENCE BECAUSE A DEFENDANT IS PRESUMED TO BE
INNOCENT.**

**BY THE SAME TOKEN, YOU DO NOT HAVE TO ACCEPT
THE TESTIMONY OF ANY WITNESS WHO HAS NOT BEEN
CONTRADICTED OR IMPEACHED, IF YOU FIND THE
WITNESS NOT TO BE CREDIBLE. YOU ALSO HAVE TO
DECIDE WHICH WITNESSES TO BELIEVE AND WHICH
FACTS ARE TRUE. TO DO THIS YOU MUST LOOK AT ALL
THE EVIDENCE, DRAWING UPON YOUR OWN COMMON
SENSE AND PERSONAL EXPERIENCE. BUT, AGAIN, YOU
MUST KEEP IN MIND THAT THE BURDEN OF PROOF IS
ALWAYS ON THE GOVERNMENT AND A DEFENDANT IS**

**NOT REQUIRED TO CALL ANY WITNESSES OR OFFER ANY
EVIDENCE, BECAUSE HE IS PRESUMED TO BE INNOCENT.**

OTHER INDIVIDUALS NOT ON TRIAL

**YOU HEARD EVIDENCE ABOUT THE INVOLVEMENT
OF CERTAIN OTHER INDIVIDUALS IN THE CRIMES
CHARGED IN THE INDICTMENT. YOU MAY NOT DRAW
ANY INFERENCE, FAVORABLE OR UNFAVORABLE,
TOWARD THE GOVERNMENT OR THE DEFENDANT ON
TRIAL FROM THE FACT THAT CERTAIN PERSONS ARE
NOT ON TRIAL BEFORE YOU. YOU SHOULD DRAW NO
INFERENCE FROM THE FACT THAT ANY OTHER PERSON
IS NOT PRESENT AT THIS TRIAL. YOUR CONCERN IS
SOLELY THE DEFENDANT ON TRIAL BEFORE YOU.**

**THAT OTHER INDIVIDUALS ARE NOT ON TRIAL
BEFORE YOU IS NOT A MATTER OF CONCERN TO YOU.
YOU SHOULD NOT SPECULATE AS TO THE REASONS**

THESE INDIVIDUALS ARE NOT ON TRIAL BEFORE YOU.

THE FACT THAT THESE INDIVIDUALS ARE NOT ON TRIAL

BEFORE YOU SHOULD NOT CONTROL OR INFLUENCE

YOUR VERDICT WITH REFERENCE TO THE DEFENDANT

WHO IS ON TRIAL. YOU MUST ONLY CONSIDER WHETHER

THE GOVERNMENT HAS PROVED, BEYOND A

REASONABLE DOUBT, THAT THE DEFENDANT IS GUILTY

OF A CRIME.

ACTS AND DECLARATIONS OF CO-CONSPIRATORS

YOU WILL RECALL THAT I HAVE ADMITTED INTO EVIDENCE AGAINST THE DEFENDANT THE ACTS AND STATEMENTS OF OTHERS BECAUSE THESE ACTS AND STATEMENTS WERE COMMITTED BY PERSONS WHO, THE GOVERNMENT CHARGES, WERE ALSO CONFEDERATES OR CO-CONSPIRATORS OF THE DEFENDANT ON TRIAL.

THE REASON FOR ALLOWING THIS EVIDENCE TO BE RECEIVED AGAINST THE DEFENDANT HAS TO DO WITH THE NATURE OF THE CRIME OF CONSPIRACY. A CONSPIRACY IS OFTEN REFERRED TO AS A PARTNERSHIP IN CRIME. THUS, AS IN OTHER TYPES OF PARTNERSHIPS, WHEN PEOPLE ENTER INTO A CONSPIRACY TO ACCOMPLISH AN UNLAWFUL END, EACH AND EVERY

MEMBER BECOMES AN AGENT FOR THE OTHER

CONSPIRATORS IN CARRYING OUT THE CONSPIRACY.

ACCORDINGLY, THE REASONABLY FORESEEABLE

ACTS, DECLARATIONS, STATEMENTS, AND OMISSIONS OF

ANY MEMBER OF THE CONSPIRACY AND IN

FURTHERANCE OF THE COMMON PURPOSE OF THE

CONSPIRACY, ARE DEEMED, UNDER THE LAW, TO BE THE

ACTS OF ALL OF THE MEMBERS, AND ALL OF THE

MEMBERS ARE RESPONSIBLE FOR SUCH ACTS,

DECLARATIONS, STATEMENTS, AND OMISSIONS.

IF YOU FIND, BEYOND A REASONABLE DOUBT, THAT

THE DEFENDANT WAS A MEMBER OF THE CONSPIRACY

CHARGED IN THE INDICTMENT, THEN, ANY ACTS DONE

OR STATEMENTS MADE IN FURTHERANCE OF THE

**CONSPIRACY BY PERSONS ALSO FOUND BY YOU TO HAVE
BEEN MEMBERS OF THAT CONSPIRACY, MAY BE
CONSIDERED AGAINST THE DEFENDANT. THIS IS SO
EVEN IF SUCH ACTS WERE DONE AND STATEMENTS WERE
MADE IN THE DEFENDANT'S ABSENCE AND WITHOUT HIS
KNOWLEDGE.**

**HOWEVER, BEFORE YOU MAY CONSIDER THE
STATEMENTS OR ACTS OF A CO-CONSPIRATOR IN
DECIDING THE ISSUE OF THE DEFENDANT'S GUILT, YOU
MUST FIRST DETERMINE THAT THE ACTS AND
STATEMENTS WERE MADE DURING THE EXISTENCE, AND
IN FURTHERANCE, OF THE UNLAWFUL SCHEME.**

LIMITING INSTRUCTION ON REVERSE 404(B) EVIDENCE OF

OTHER CRIMES

**ALSO IN MY INSTRUCTIONS TO YOU AT THE START
OF THE TRIAL, I TOLD YOU THAT IF EVIDENCE WAS
RECEIVED FOR A LIMITED PURPOSE, IT WAS NOT
EVIDENCE YOU COULD CONSIDER FOR ANY OTHER
PURPOSE. I DID GIVE YOU SUCH A LIMITING
INSTRUCTION IN THIS CASE. DURING THE TRIAL YOU
HEARD EVIDENCE OFFERED BY THE DEFENDANT TO
SHOW THAT ON A DIFFERENT OCCASION MELDE
RUTLEDGE ENGAGED IN CONDUCT SIMILAR TO THE
CONDUCT CHARGED IN THE INDICTMENT.**

**IN THAT CONNECTION, LET ME REMIND YOU THAT
NEITHER MELDE RUTLEDGE NOR DARIUS JOHNSON IS ON**

**TRIAL FOR COMMITTING THIS ACT NOT ALLEGED IN THE
INDICTMENT. ACCORDINGLY, YOU MAY NOT CONSIDER
THIS EVIDENCE OF THE SIMILAR ACT BY MELDE
RUTLEDGE AS A SUBSTITUTE FOR PROOF THAT DARIUS
JOHNSON COMMITTED THE CRIMES CHARGED. NOR MAY
YOU CONSIDER THIS EVIDENCE AS PROOF THAT MELDE
RUTLEDGE HAS A CRIMINAL PERSONALITY OR BAD
CHARACTER. THE EVIDENCE OF THE OTHER, SIMILAR
ACT WAS ADMITTED FOR A MUCH MORE LIMITED
PURPOSE AND YOU MAY CONSIDER IT ONLY FOR THAT
LIMITED PURPOSE.**

**IF YOU DETERMINE THAT MELDE RUTLEDGE WAS
INVOLVED IN THE COMMISSION OF ANY OF THE ACTS
CHARGED IN THE INDICTMENT AND THE SIMILAR ACTS**

**AS WELL, THEN YOU MAY, BUT YOU NEED NOT DRAW AN
INFERENCE THAT HIS INVOLVEMENT IN THE ACTS
CHARGED IN THE INDICTMENT WAS KNOWING AND
INTENTIONAL AND NOT BECAUSE OF SOME MISTAKE,
ACCIDENT OR OTHER INNOCENT REASONS.**

**EVIDENCE OF SIMILAR ACTS MAY NOT BE
CONSIDERED BY YOU FOR ANY OTHER PURPOSE.
SPECIFICALLY, YOU MAY NOT USE THIS EVIDENCE TO
CONCLUDE THAT BECAUSE MELDE RUTLEDGE
COMMITTED THE OTHER ACT HE MUST ALSO HAVE BEEN
INVOLVED IN THE COMMISSION OF THE ACTS CHARGED
IN THE INDICTMENT.**

INTRODUCTION TO INDICTMENT

I WILL NOW TURN TO THE SECOND PART OF THIS CHARGE -- AND WILL, AS I INDICATED AT THE OUTSET, INSTRUCT YOU AS TO THE SPECIFIC ELEMENTS OF THE CRIMES CHARGED THAT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT TO WARRANT A FINDING OF GUILT IN THIS CASE.

THE DEFENDANT IS FORMALLY CHARGED IN AN INDICTMENT. AS I INSTRUCTED YOU AT THE BEGINNING OF THIS CASE, AN INDICTMENT IS A CHARGE OR ACCUSATION. THE INDICTMENT IN THIS CASE CONTAINS A TOTAL OF 4 COUNTS.

YOU MUST, AS A MATTER OF LAW, CONSIDER EACH COUNT OF THE INDICTMENT SEPARATELY, AND YOU

MUST RETURN A SEPARATE VERDICT FOR EACH COUNT

ON WHICH THE DEFENDANT IS CHARGED.

TO REPEAT, AN INDICTMENT IS MERELY AN

ACCUSATION IN WRITING. IT IS NOT EVIDENCE OF

GUILT. IT IS ENTITLED TO NO WEIGHT IN YOUR

DETERMINATION OF THE FACTS. THE DEFENDANT HAS

PLEADED NOT GUILTY, THEREBY PLACING IN ISSUE

EACH ALLEGATION IN THE INDICTMENT.

AS TO THE INDICTMENT IN THIS CASE, I WILL FIRST

GO OVER SOME OF THE GENERAL TERMS, THEN THE

SPECIFIC CRIMES CHARGED IN EACH COUNT.

DATES APPROXIMATE

THE INDICTMENT CHARGES “ON OR ABOUT” CERTAIN DATES. IT DOES NOT MATTER IF THE INDICTMENT CHARGES THAT A SPECIFIC ACT OCCURRED ON OR ABOUT A CERTAIN DATE, AND THE EVIDENCE INDICATES THAT, IN FACT, IT WAS ON ANOTHER DATE. THE LAW ONLY REQUIRES SUBSTANTIAL SIMILARITY BETWEEN THE DATES ALLEGED IN THE INDICTMENT AND THE DATE ESTABLISHED BY TESTIMONY OR EXHIBITS.

VENUE

**IN ADDITION TO THE ELEMENTS OF THE OFFENSE,
YOU MUST CONSIDER WHETHER ANY ACT IN
FURTHERANCE OF THE CRIME OCCURRED WITHIN THE
EASTERN DISTRICT OF NEW YORK.**

**YOU ARE INSTRUCTED THAT THE EASTERN DISTRICT
OF NEW YORK ENCOMPASSES THE COUNTIES OF KINGS,
NASSAU, QUEENS, RICHMOND, AND SUFFOLK.**

**IN THIS REGARD, THE GOVERNMENT NEED NOT
PROVE THAT THE CRIME ITSELF WAS COMMITTED IN
THIS DISTRICT OR THAT THE DEFENDANT HIMSELF WAS
PRESENT HERE. IT IS SUFFICIENT TO SATISFY THIS
ELEMENT IF ANY ACT IN FURTHERANCE OF THE CRIME
OCCURRED WITHIN THIS DISTRICT. IF YOU FIND THAT**

**THE GOVERNMENT HAS FAILED TO PROVE THAT ANY
ACT IN FURTHERANCE OF THE CRIME OCCURRED
WITHIN THIS DISTRICT—OR IF YOU HAVE A REASONABLE
DOUBT ON THIS ISSUE—THEN YOU MUST ACQUIT.**

USE OF CONJUNCTIVE AND DISJUNCTIVE IN INDICTMENT

ONE OR MORE COUNTS OF THE INDICTMENT MAY ACCUSE THE DEFENDANT OF VIOLATING THE SAME STATUTE IN MORE THAN ONE WAY. IN OTHER WORDS, THE INDICTMENT MAY ALLEGE THAT THE STATUTE IN QUESTION WAS VIOLATED BY VARIOUS ACTS WHICH ARE IN THE INDICTMENT JOINED BY THE CONJUNCTIVE "AND," WHILE THE STATUTE AND THE ELEMENTS OF THE OFFENSE ARE STATED IN THE DISJUNCTIVE, USING THE WORD "OR." IN THESE INSTANCES, IT IS SUFFICIENT FOR A FINDING OF GUILT IF THE EVIDENCE ESTABLISHED BEYOND A REASONABLE DOUBT THE VIOLATION OF THE STATUTE BY ANY ONE OF THE ACTS CHARGED.

KNOWINGLY AND INTENTIONALLY
**DURING THESE INSTRUCTIONS ON THE ELEMENTS
OF THE CRIMES CHARGED, YOU WILL HEAR ME USE THE
WORDS "KNOWINGLY" AND "INTENTIONALLY" FROM
TIME TO TIME. BEFORE YOU CAN FIND THE DEFENDANT
GUILTY, YOU MUST BE SATISFIED THAT THE DEFENDANT
WAS ACTING KNOWINGLY AND INTENTIONALLY.**

**A PERSON ACTS "KNOWINGLY" IF HE ACTS
INTENTIONALLY AND VOLUNTARILY, AND NOT BECAUSE
OF IGNORANCE, MISTAKE, ACCIDENT, OR CARELESSNESS.
WHETHER THE DEFENDANT ACTED KNOWINGLY MAY BE
PROVEN BY HIS CONDUCT AND BY ALL OF THE FACTS
AND CIRCUMSTANCES SURROUNDING THE CASE.**

**A PERSON ACTS “INTENTIONALLY” IF HE ACTS
DELIBERATELY AND PURPOSEFULLY. YOU MUST BE
SATISFIED BEYOND A REASONABLE DOUBT THAT THE
DEFENDANT ACTED DELIBERATELY AND PURPOSEFULLY.
THAT IS, THE DEFENDANT’S ACTS MUST HAVE BEEN THE
PRODUCT OF THE DEFENDANT’S CONSCIOUS OBJECTIVE
RATHER THAN THE PRODUCT OF A MISTAKE OR
ACCIDENT.**

CONSPIRACY GENERALLY

COUNT ONE OF THE INDICTMENT CHARGES THE DEFENDANT WITH CONSPIRACY TO COMMIT MAIL FRAUD OR WIRE FRAUD. I WILL FIRST EXPLAIN THE CRIME OF CONSPIRACY GENERALLY BEFORE TURNING TO THE ALLEGED OBJECTS OF THE CHARGED CONSPIRACY – THAT IS, OF WIRE FRAUD AND MAIL FRAUD.

A CONSPIRACY IS AN OFFENSE SEPARATE FROM THE COMMISSION OF ANY OFFENSE THAT MAY HAVE BEEN COMMITTED PURSUANT TO THE CONSPIRACY. THAT IS BECAUSE THE FORMATION OF A CONSPIRACY, OF A PARTNERSHIP FOR CRIMINAL PURPOSES, IS IN AND OF ITSELF A CRIME. THUS, IF A CONSPIRACY EXISTS, EVEN

**IF IT SHOULD FAIL IN ACHIEVING ITS UNLAWFUL
PURPOSE, IT IS STILL PUNISHABLE AS A CRIME. THE
ESSENCE OF THE CHARGE OF CONSPIRACY IS AN
UNDERSTANDING BETWEEN OR AMONG TWO OR MORE
PERSONS, THAT THEY WILL ACT TOGETHER TO
ACCOMPLISH A COMMON OBJECTIVE THAT THEY KNOW
IS UNLAWFUL.**

**IN ORDER TO PROVE THE CRIME OF CONSPIRACY,
THE GOVERNMENT MUST PROVE TWO ELEMENTS
BEYOND A REASONABLE DOUBT:
FIRST, THAT TWO OR MORE PERSONS ENTERED INTO
THE CHARGED CONSPIRACY; AND**

SECOND, THAT THE DEFENDANT KNOWINGLY AND WILLFULLY JOINED AND PARTICIPATED IN THE CONSPIRACY.

THE FIRST ELEMENT THAT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT TO ESTABLISH THE OFFENSE OF CONSPIRACY IS THAT TWO OR MORE PERSONS ENTERED INTO THE CHARGED CONSPIRACY. ONE PERSON CANNOT COMMIT THE CRIME OF CONSPIRACY ALONE.

IN ORDER FOR THE GOVERNMENT TO SATISFY THIS ELEMENT, YOU NEED NOT FIND THAT THE ALLEGED MEMBERS OF THE CONSPIRACY MET TOGETHER AND ENTERED INTO ANY EXPRESS OR FORMAL AGREEMENT. SIMILARLY, YOU NEED NOT FIND THAT THE ALLEGED

**CONSPIRATORS STATED, IN WORDS OR WRITING, WHAT
THE SCHEME WAS, ITS OBJECT OR PURPOSE, OR EVERY
PRECISE DETAIL OF THE SCHEME OR THE MEANS BY
WHICH ITS OBJECT OR PURPOSE WAS TO BE
ACCOMPLISHED. INDEED, IT IS SUFFICIENT FOR THE
GOVERNMENT TO SHOW THAT THE CONSPIRATORS
CAME TO A MUTUAL UNDERSTANDING, EITHER SPOKEN
OR UNSPOKEN, BETWEEN TWO OR MORE PEOPLE TO
COOPERATE WITH EACH OTHER TO ACCOMPLISH AN
UNLAWFUL ACT.**

**YOU MAY, OF COURSE, FIND THAT THE EXISTENCE
OF AN AGREEMENT TO DISOBEY OR DISREGARD THE
LAW HAS BEEN ESTABLISHED BY DIRECT PROOF.
HOWEVER, SINCE CONSPIRACY IS, BY ITS VERY NATURE,**

**CHARACTERIZED BY SECRECY, YOU MAY ALSO INFERENCE ITS
EXISTENCE FROM THE CIRCUMSTANCES OF THE CASE
AND THE CONDUCT OF THE PARTIES INVOLVED.**

**IN THE CONTEXT OF CONSPIRACY CASES, ACTIONS
OFTEN SPEAK LOUDER THAN WORDS. IN DETERMINING
WHETHER AN AGREEMENT EXISTED HERE, YOU MAY
CONSIDER THE ACTIONS AND STATEMENTS OF ALL OF
THOSE YOU FIND TO BE PARTICIPANTS AS PROOF THAT A
COMMON DESIGN EXISTED ON THE PART OF THE
PERSONS CHARGED TO ACT TOGETHER TO ACCOMPLISH
AN UNLAWFUL PURPOSE.**

**THE SECOND ELEMENT THAT THE GOVERNMENT
MUST PROVE BEYOND A REASONABLE DOUBT TO
ESTABLISH THE OFFENSE OF CONSPIRACY, IS THAT THE**

**DEFENDANT KNOWINGLY AND WILLFULLY JOINED AND
PARTICIPATED IN THE CONSPIRACY.**

**IF YOU ARE SATISFIED THAT THE CONSPIRACY
CHARGED IN THE INDICTMENT EXISTED, YOU MUST NEXT
ASK YOURSELVES WHO THE MEMBERS OF THAT
CONSPIRACY WERE. IN DECIDING WHETHER THE
DEFENDANT WAS, IN FACT, A MEMBER OF THE
CONSPIRACY, YOU SHOULD CONSIDER WHETHER THE
DEFENDANT KNOWINGLY AND WILLFULLY JOINED THE
CONSPIRACY. DID THE DEFENDANT PARTICIPATE IN IT
WITH KNOWLEDGE OF ITS UNLAWFUL PURPOSE AND
WITH THE SPECIFIC INTENTION OF FURTHERING ITS
BUSINESS OR OBJECTIVE AS AN ASSOCIATE OR WORKER?**

NOW, IT HAS BEEN SAID THAT IN ORDER FOR A DEFENDANT TO BE DEEMED A PARTICIPANT IN A CONSPIRACY, HE MUST HAVE HAD A STAKE IN THE VENTURE OR ITS OUTCOME. YOU ARE INSTRUCTED THAT, WHILE PROOF OF A FINANCIAL INTEREST IN THE OUTCOME OF A SCHEME IS NOT ESSENTIAL, IF YOU FIND THAT THE DEFENDANT HAD SUCH AN INTEREST, THAT IS A FACTOR THAT YOU MAY PROPERLY CONSIDER IN DETERMINING WHETHER OR NOT THE DEFENDANT WAS A MEMBER OF THE CONSPIRACY CHARGED IN THE INDICTMENT.

AS I MENTIONED A MOMENT AGO, BEFORE THE DEFENDANT CAN BE FOUND TO HAVE BEEN A CONSPIRATOR, YOU MUST FIRST FIND THAT HE

**KNOWINGLY JOINED IN THE UNLAWFUL AGREEMENT OR
PLAN. THE KEY QUESTION, THEREFORE, IS WHETHER
THE DEFENDANT JOINED THE CONSPIRACY WITH AN
AWARENESS OF AT LEAST SOME OF THE BASIC AIMS AND
PURPOSES OF THE UNLAWFUL AGREEMENT.**

**IT IS IMPORTANT FOR YOU TO NOTE THAT THE
DEFENDANT'S PARTICIPATION IN THE CONSPIRACY
MUST BE ESTABLISHED BY INDEPENDENT EVIDENCE OF
HIS OWN ACTS OR STATEMENTS, AS WELL AS THOSE OF
THE OTHER ALLEGED CO-CONSPIRATORS, AND THE
REASONABLE INFERENCES WHICH MAY BE DRAWN FROM
THEM.**

**THE DEFENDANT'S KNOWLEDGE IS A MATTER OF
INFERENCE FROM THE FACTS PROVED. IN THAT**

CONNECTION, I INSTRUCT YOU THAT TO BECOME A MEMBER OF THE CONSPIRACY, THE DEFENDANT NEED NOT HAVE KNOWN THE IDENTITIES OF EACH AND EVERY OTHER MEMBER, NOR NEED HE HAVE BEEN APPRISED OF ALL OF THEIR ACTIVITIES. MOREOVER, THE DEFENDANT NEED NOT HAVE BEEN FULLY INFORMED AS TO ALL OF THE DETAILS, OR THE SCOPE, OF THE CONSPIRACY IN ORDER TO JUSTIFY AN INFERENCE OF KNOWLEDGE ON HIS PART. FURTHERMORE, THE DEFENDANT NEED NOT HAVE JOINED IN ALL OF THE CONSPIRACY'S UNLAWFUL OBJECTIVES.

THE EXTENT OF THE DEFENDANT'S PARTICIPATION HAS NO BEARING ON THE ISSUE OF THE DEFENDANT'S GUILT. A CONSPIRATOR'S LIABILITY IS NOT MEASURED

BY THE EXTENT OR DURATION OF HIS PARTICIPATION.

INDEED, EACH MEMBER MAY PERFORM SEPARATE AND

DISTINCT ACTS AND MAY PERFORM THEM AT DIFFERENT

TIMES. SOME CONSPIRATORS PLAY MAJOR ROLES,

WHILE OTHERS PLAY MINOR PARTS IN THE SCHEME. AN

EQUAL ROLE IS NOT WHAT THE LAW REQUIRES. IN FACT,

EVEN A SINGLE ACT MAY BE SUFFICIENT TO DRAW THE

DEFENDANT WITHIN THE AMBIT OF THE CONSPIRACY.

I WANT TO CAUTION YOU, HOWEVER, THAT THE

DEFENDANT'S MERE PRESENCE AT THE SCENE OF AN

ALLEGED CRIME DOES NOT, BY ITSELF, MAKE HIM A

MEMBER OF THE CONSPIRACY. SIMILARLY, MERE

ASSOCIATION WITH ONE OR MORE MEMBERS OF THE

CONSPIRACY DOES NOT AUTOMATICALLY MAKE THE

DEFENDANT A MEMBER. A PERSON MAY KNOW, OR BE FRIENDLY WITH, A CRIMINAL, WITHOUT BEING A CRIMINAL HIMSELF. MERE SIMILARITY OF CONDUCT OR THE FACT THAT THEY MAY HAVE ASSEMBLED TOGETHER AND DISCUSSED COMMON AIMS AND INTERESTS DOES NOT NECESSARILY ESTABLISH MEMBERSHIP IN THE CONSPIRACY.

I ALSO WANT TO CAUTION YOU THAT MERE KNOWLEDGE OR ACQUIESCENCE, WITHOUT PARTICIPATION, IN THE UNLAWFUL PLAN IS NOT SUFFICIENT. MOREOVER, THE FACT THAT THE ACTS OF A DEFENDANT, WITHOUT KNOWLEDGE, MERELY HAPPEN TO FURTHER THE PURPOSES OR OBJECTIVES OF THE CONSPIRACY, DOES NOT MAKE THE DEFENDANT A

**MEMBER. MORE IS REQUIRED UNDER THE LAW. WHAT IS
NECESSARY IS THAT THE DEFENDANT MUST HAVE
PARTICIPATED WITH KNOWLEDGE OF AT LEAST SOME
OF THE PURPOSES OR OBJECTIVES OF THE CONSPIRACY
AND WITH THE INTENTION OF AIDING IN THE
ACCOMPLISHMENT OF THOSE UNLAWFUL ENDS.**

**IN SUM, THE DEFENDANT, WITH AN UNDERSTANDING
OF THE UNLAWFUL CHARACTER OF THE CONSPIRACY,
MUST HAVE INTENTIONALLY ENGAGED, ADVISED OR
ASSISTED IN IT FOR THE PURPOSE OF FURTHERING THE
ILLEGAL UNDERTAKING. HE THEREBY BECOMES A
KNOWING AND WILLING PARTICIPANT IN THE
UNLAWFUL AGREEMENT -- THAT IS TO SAY, A
CONSPIRATOR.**

WIRE FRAUD GENERALLY

**TO DETERMINE WHETHER THE GOVERNMENT HAS
PROVED BEYOND A REASONABLE DOUBT THAT THE
DEFENDANT ENGAGED IN AN ILLEGAL CONSPIRACY, YOU
MUST ALSO UNDERSTAND THE CRIMES THAT COUNT ONE
CHARGES HIM WITH AGREEING TO COMMIT, WHICH ARE
WIRE FRAUD AND MAIL FRAUD.**

**THE RELEVANT STATUTE AS TO WIRE FRAUD IS
SECTION 1343 OF TITLE 18 OF THE UNITED STATES CODE.
IT PROVIDES:**

**WHOEVER, HAVING DEVISED OR
INTENDING TO DEVISE ANY SCHEME OR
ARTIFICE TO DEFRAUD, OR FOR
OBTAINING MONEY OR PROPERTY BY
MEANS OF FALSE OR FRAUDULENT
PRETENSES, REPRESENTATIONS, OR**

PROMISES, TRANSMITS OR CAUSES TO
BE TRANSMITTED BY MEANS OF WIRE
RADIO OR TELEVISION
COMMUNICATION IN INTERSTATE OR
FOREIGN COMMERCE, ANY WRITINGS,
SIGNS, SIGNALS, PICTURES, OR SOUNDS
FOR THE PURPOSE OF EXECUTING
SUCH SCHEME OR ARTIFICE SHALL BE
[GUILTY OF A CRIME].

ELEMENTS OF THE OFFENSE

THE ELEMENTS OF WIRE FRAUD ARE AS FOLLOWS:
FIRST, THAT THERE WAS A SCHEME OR ARTIFICE TO
DEFRAUD OR TO OBTAIN MONEY OR PROPERTY BY
MATERIALLY FALSE AND FRAUDULENT PRETENSES,
REPRESENTATIONS OR PROMISES;
SECOND, THAT THE DEFENDANT KNOWINGLY AND
WILLFULLY PARTICIPATED IN THE SCHEME OR ARTIFICE

TO DEFRAUD, WITH KNOWLEDGE OF ITS FRAUDULENT NATURE AND WITH SPECIFIC INTENT TO DEFRAUD; AND THIRD, THAT IN EXECUTION OF THAT SCHEME, THE DEFENDANT USED OR CAUSED THE USE OF INTERSTATE WIRES. THIS WOULD INCLUDE THE USE OF A BANK WIRE TRANSFER OR AN EMAIL SENT OVER THE INTERNET THAT TRAVELED ACROSS STATE LINES.

I WILL NOW EXPLAIN EACH OF THESE ELEMENTS FURTHER.

FIRST ELEMENT – SCHEME TO DEFRAUD

THE FIRST ELEMENT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT IS THAT THERE WAS A SCHEME OR ARTIFICE TO DEFRAUD THE CONSTRUCTION CONTRACTORS OR SUBCONTRACTORS OF MONEY OR PROPERTY BY MEANS OF FALSE OR

**FRAUDULENT PRETENSES, REPRESENTATIONS, OR
PROMISES.**

**A “SCHEME OR ARTIFICE” IS MERELY A PLAN FOR
THE ACCOMPLISHMENT OF AN OBJECTIVE. “FRAUD” IS A
GENERAL TERM WHICH EMBRACES ALL THE VARIOUS
MEANS THAT AN INDIVIDUAL CAN DEVISE AND THAT ARE
USED BY AN INDIVIDUAL TO GAIN AN ADVANTAGE OVER
ANOTHER BY FALSE REPRESENTATIONS, SUGGESTIONS,
OR DELIBERATE DISREGARD FOR THE TRUTH.**

**THUS, A “SCHEME TO DEFRAUD” IS MERELY A PLAN
TO DEPRIVE ANOTHER OF MONEY OR PROPERTY BY
TRICK, DECEIT, DECEPTION OR SWINDLE. A STATEMENT,
REPRESENTATION, CLAIM, OR DOCUMENT IS FALSE IF IT
IS UNTRUE WHEN MADE AND WAS KNOWN THEN TO BE**

UNTRUE BY THE PERSON MAKING IT OR CAUSING IT TO BE MADE. A REPRESENTATION OR STATEMENT IS FRAUDULENT IF IT WAS FALSELY MADE WITH THE INTENT TO DECEIVE. HALF-TRUTHS, THE CONCEALMENT OR OMISSION OF MATERIAL FACTS, OR THE EXPRESSION OF AN OPINION NOT HONESTLY ENTERTAINED MAY ALSO CONSTITUTE FALSE OR FRAUDULENT STATEMENTS UNDER THE STATUTE. THE DECEPTION NEED NOT BE PREMISED UPON SPOKEN OR WRITTEN WORDS ALONE. THE ARRANGEMENT OF WORDS, OR THE CIRCUMSTANCES IN WHICH THEY ARE USED MAY CONVEY THE FALSE AND DECEPTIVE APPEARANCE. IF THERE IS DECEPTION, THE MANNER IN WHICH IT IS ACCOMPLISHED IS IMMATERIAL.

**THE FAILURE TO DISCLOSE INFORMATION MAY
ALSO CONSTITUTE A FRAUDULENT REPRESENTATION IF
THE DEFENDANT WAS UNDER A LEGAL, PROFESSIONAL
OR CONTRACTUAL DUTY TO MAKE SUCH A DISCLOSURE,
THE DEFENDANT ACTUALLY KNEW SUCH DISCLOSURE
WAS REQUIRED TO BE MADE, AND THE DEFENDANT
FAILED TO MAKE SUCH DISCLOSURE WITH INTENT TO
DEFRAUD. WHETHER THE DEFENDANT WAS UNDER A
LEGAL, PROFESSIONAL, OR CONTRACTUAL DUTY TO
MAKE SUCH A DISCLOSURE MUST BE PROVEN BY THE
GOVERNMENT BEYOND A REASONABLE DOUBT, AND MAY
NOT BE INFERRRED MERELY FROM THE DEFENDANT'S
TITLE, ROLE, OR PROFESSION.**

**THE FALSE OR FRAUDULENT REPRESENTATION OR
FAILURE TO DISCLOSE MUST RELATE TO A MATERIAL
FACT OR MATTER. A MATERIAL FACT IS ONE WHICH
WOULD REASONABLY BE EXPECTED TO BE OF CONCERN
TO A REASONABLE AND PRUDENT PERSON IN RELYING
UPON THE REPRESENTATION OR STATEMENT IN MAKING
A DECISION.**

**THIS MEANS THAT IF YOU FIND A PARTICULAR
STATEMENT OF FACT TO HAVE BEEN FALSE, YOU MUST
DETERMINE WHETHER THAT STATEMENT WAS ONE
THAT A REASONABLE PERSON MIGHT HAVE CONSIDERED
IMPORTANT IN MAKING HIS OR HER DECISION. THE
SAME PRINCIPLE APPLIES TO FRAUDULENT HALF
TRUTHS OR OMISSIONS OF MATERIAL FACTS.**

**IN ADDITION TO PROVING THAT A STATEMENT WAS
FALSE OR FRAUDULENT AND RELATED TO A MATERIAL
FACT, IN ORDER TO ESTABLISH A SCHEME TO DEFRAUD,
THE GOVERNMENT MUST PROVE THAT THE ALLEGED
SCHEME CONTEMPLATED DEPRIVING ANOTHER OF
MONEY OR PROPERTY.**

**THE GOVERNMENT IS NOT REQUIRED TO ESTABLISH
THAT THE DEFENDANT HIMSELF ORIGINATED THE
SCHEME TO DEFRAUD. NOR IS IT NECESSARY THAT THE
DEFENDANT ACTUALLY REALIZED ANY GAIN FROM THE
SCHEME, OR THAT THE INTENDED VICTIM ACTUALLY
SUFFERED ANY LOSS. SUCCESS IS NOT AN ELEMENT OF
THE CRIME CHARGED. THAT IS BECAUSE ONLY A**

**SCHEME TO DEFRAUD, AND NOT ACTUAL FRAUD, MUST
BE PROVED TO SUSTAIN A CONVICTION.**

**A SCHEME TO DEFRAUD NEED NOT BE SHOWN BY
DIRECT EVIDENCE, BUT MAY BE ESTABLISHED BY ALL OF
THE CIRCUMSTANCES AND FACTS IN THE CASE.**

**IT IS ALSO NOT NECESSARY THAT THE
GOVERNMENT PROVE EACH AND EVERY
MISREPRESENTATION OR FALSE PROMISE THAT THE
GOVERNMENT ALLEGES. IT IS SUFFICIENT IF THE
GOVERNMENT PROVES, BEYOND A REASONABLE DOUBT,
THAT ONE OR MORE OF THE MATERIAL
MISREPRESENTATIONS WAS MADE IN FURTHERANCE OF
THE SCHEME TO DEFRAUD. YOU MUST, HOWEVER, ALL
AGREE ON AT LEAST ONE MISREPRESENTATION THAT IS**

**PROVED TO BE FALSE. THAT IS, YOU CANNOT FIND THE
DEFENDANT GUILTY IF ONLY SOME OF YOU THINK THAT
MISREPRESENTATION "A" IS FALSE, WHILE OTHERS
THINK THAT ONLY MISREPRESENTATION "B" IS FALSE.
THERE MUST BE AT LEAST ONE SPECIFIC PRETENSE,
REPRESENTATION OR PROMISE ABOUT A MATERIAL
FACT THAT ALL OF YOU FIND TO BE FALSE IN ORDER TO
FIND A DEFENDANT GUILTY.**

**IF YOU FIND THAT THE GOVERNMENT HAS
SUSTAINED ITS BURDEN OF PROOF THAT A SCHEME TO
DEFRAUD, AS CHARGED, DID EXIST, YOU NEXT SHOULD
CONSIDER THE SECOND ELEMENT OF THE OFFENSE OF
WIRE FRAUD.**

SECOND ELEMENT - INTENT TO DEFRAUD

**THE SECOND ELEMENT THAT THE GOVERNMENT
MUST PROVE BEYOND A REASONABLE DOUBT IS THAT
THE DEFENDANT PARTICIPATED IN THE SCHEME TO
DEFRAUD KNOWINGLY, WILLFULLY, AND WITH SPECIFIC
INTENT TO DEFRAUD A VICTIM.**

**AGAIN, TO ACT “KNOWINGLY” MEANS TO ACT
VOLUNTARILY AND DELIBERATELY, RATHER THAN
MISTAKENLY OR INADVERTENTLY.**

**TO ACT “WILLFULLY” MEANS TO ACT KNOWINGLY
AND PURPOSELY, WITH AN INTENT TO DO SOMETHING
THE LAW FORBIDS; THAT IS TO SAY, WITH A BAD
PURPOSE TO DISOBEY OR DISREGARD THE LAW.**

**TO ACT WITH “INTENT TO DEFRAUD” MEANS TO ACT
KNOWINGLY AND WITH THE SPECIFIC INTENT TO**

**DECEIVE, FOR THE PURPOSE OF OBTAINING MONEY OR
PROPERTY FROM ANOTHER.**

**HOW SOMEONE ACTED – HIS OR HER STATE OF MIND
– IS A QUESTION OF FACT FOR YOU TO DETERMINE.

DIRECT PROOF OF KNOWLEDGE AND FRAUDULENT
INTENT IS NOT ALWAYS AVAILABLE, NOR IS IT
REQUIRED. THE ULTIMATE FACTS OF KNOWLEDGE AND
CRIMINAL INTENT MAY BE ESTABLISHED BY
CIRCUMSTANTIAL EVIDENCE, WHICH I EXPLAINED TO
YOU EARLIER. CIRCUMSTANTIAL EVIDENCE, IF
BELIEVED, IS OF NO LESS VALUE THAN DIRECT
EVIDENCE.**

**SINCE AN ESSENTIAL ELEMENT OF THE WIRE FRAUD
CRIME CHARGED IS INTENT TO DEFRAUD, IT FOLLOWS**

THAT GOOD FAITH ON THE PART OF THE DEFENDANT IS A COMPLETE DEFENSE TO A CHARGE OF WIRE FRAUD. THE DEFENDANT, HOWEVER, HAS NO BURDEN TO ESTABLISH A DEFENSE OF GOOD FAITH. THE BURDEN IS ON THE GOVERNMENT TO PROVE FRAUDULENT INTENT AND CONSEQUENT LACK OF GOOD FAITH BEYOND A REASONABLE DOUBT.

UNDER THE WIRE FRAUD STATUTE, EVEN FALSE REPRESENTATIONS OR STATEMENTS, OR OMISSIONS OF MATERIAL FACTS, DO NOT AMOUNT TO A FRAUD UNLESS DONE WITH FRAUDULENT INTENT. HOWEVER MISLEADING OR DECEPTIVE A PLAN MAY BE, IT IS NOT FRAUDULENT IF IT WAS DEVISED OR CARRIED OUT IN GOOD FAITH. AN HONEST BELIEF IN THE TRUTH OF THE

**REPRESENTATIONS MADE BY OR ON BEHALF OF THE
DEFENDANT IS A COMPLETE DEFENSE, HOWEVER
INACCURATE THE STATEMENTS MAY TURN OUT TO BE.**

**IN DETERMINING WHETHER THE DEFENDANT ACTED
KNOWINGLY, YOU MAY CONSIDER WHETHER THE
DEFENDANT DELIBERATELY CLOSED HIS EYES TO WHAT
OTHERWISE WOULD HAVE BEEN OBVIOUS TO HIM. YOU
MAY ONLY INFERENCE KNOWLEDGE OF THE EXISTENCE OF A
PARTICULAR FACT IF THE DEFENDANT WAS AWARE OF A
HIGH PROBABILITY OF ITS EXISTENCE, UNLESS THE
DEFENDANT ACTUALLY BELIEVED THAT IT DID NOT
EXIST. IF YOU FIND BEYOND A REASONABLE DOUBT
THAT THE DEFENDANT ACTED WITH A CONSCIOUS
PURPOSE TO AVOID LEARNING A HIGHLY PROBABLE**

TRUTH, THEN THIS ELEMENT MAY BE SATISFIED.

HOWEVER, GUILTY KNOWLEDGE MAY NOT BE

ESTABLISHED BY DEMONSTRATING THAT THE

DEFENDANT WAS MERELY NEGLIGENT, FOOLISH,

CARELESS, OR MISTAKEN.

AS A PRACTICAL MATTER, THEN, IN ORDER TO

SUSTAIN A CHARGE OF WIRE FRAUD, THE GOVERNMENT

MUST ESTABLISH BEYOND A REASONABLE DOUBT THAT

THE DEFENDANT KNEW THAT HIS CONDUCT AS A

PARTICIPANT IN THE SCHEME WAS CALCULATED TO

DECEIVE AND, NONETHELESS, HE ASSOCIATED HIMSELF

WITH THE ALLEGED FRAUDULENT SCHEME FOR THE

PURPOSE OF CAUSING SOME FINANCIAL LOSS TO

**ANOTHER OR TO DEPRIVE ANOTHER OF THEIR INTEREST
IN PROPERTY.**

**TO CONCLUDE WITH THIS ELEMENT, IF YOU FIND
THE GOVERNMENT HAS ESTABLISHED BEYOND A
REASONABLE DOUBT THAT THE DEFENDANT WAS A
KNOWING PARTICIPANT AND ACTED WITH INTENT TO
DEFRAUD, YOU SHOULD CONSIDER THE THIRD ELEMENT
OF THE WIRE FRAUD CHARGE.**

THIRD ELEMENT – USE OF INTERSTATE WIRES
**THE THIRD AND FINAL ELEMENT THAT THE
GOVERNMENT MUST ESTABLISH BEYOND A REASONABLE
DOUBT IS THE USE OF AN INTERSTATE WIRE
COMMUNICATION IN FURTHERANCE OF THE SCHEME TO
DEFRAUD. A WIRE COMMUNICATION INCLUDES A WIRE**

**TRANSFER OF FUNDS OR AN EMAIL. THE WIRE
COMMUNICATION MUST PASS BETWEEN TWO OR MORE
STATES, OR IT MUST PASS BETWEEN THE UNITED STATES
AND A FOREIGN COUNTRY.**

**THE USE OF THE WIRES NEED NOT ITSELF BE A
FRAUDULENT REPRESENTATION. IT MUST, HOWEVER,
FURTHER OR ASSIST IN THE CARRYING OUT OF THE
SCHEME TO DEFRAUD. IT IS NOT NECESSARY FOR THE
DEFENDANT TO BE DIRECTLY OR PERSONALLY
INVOLVED IN THE WIRE COMMUNICATION, AS LONG AS
THE COMMUNICATION WAS REASONABLY FORESEEABLE
IN THE EXECUTION OF THE ALLEGED SCHEME TO
DEFRAUD IN WHICH THE DEFENDANT IS ACCUSED OF
PARTICIPATING.**

**IN THIS REGARD, IT IS SUFFICIENT TO ESTABLISH
THIS ELEMENT OF THE CRIME IF THE EVIDENCE
JUSTIFIES A FINDING THAT THE DEFENDANT CAUSED
THE WIRES TO BE USED BY OTHERS. THIS DOES NOT
MEAN THAT THE DEFENDANT MUST SPECIFICALLY HAVE
AUTHORIZED OTHERS TO MAKE THE WIRE TRANSFER OR
SEND THE EMAIL. WHEN ONE DOES AN ACT WITH
KNOWLEDGE THAT THE USE OF THE WIRES WILL
FOLLOW IN THE ORDINARY COURSE OF BUSINESS OR
WHERE SUCH USE OF THE WIRES REASONABLY CAN BE
FORESEEN, EVEN THOUGH NOT ACTUALLY INTENDED,
THEN HE CAUSES THE WIRES TO BE USED.

WITH RESPECT TO THE USE OF THE WIRES, THE
GOVERNMENT MUST ESTABLISH BEYOND A REASONABLE**

DOUBT THE PARTICULAR USE CHARGED IN THE
INDICTMENT. HOWEVER, THE GOVERNMENT DOES NOT
HAVE TO PROVE THAT THE WIRES WERE USED ON THE
EXACT DATE CHARGED IN THE INDICTMENT. IT IS
SUFFICIENT IF THE EVIDENCE ESTABLISHES BEYOND A
REASONABLE DOUBT THAT THE WIRES WERE USED ON A
DATE SUBSTANTIALLY SIMILAR TO THE DATES CHARGED
IN THE INDICTMENT.

MAIL FRAUD GENERALLY

**THE RELEVANT STATUTE AS TO MAIL FRAUD IS
SECTION 1341 OF TITLE 18 OF THE UNITED STATES CODE.
IT PROVIDES:**

**WHOEVER, HAVING DEVISED OR
INTENDED TO DEVISE ANY SCHEME OR
ARTIFICE TO DEFRAUD, OR FOR
OBTAINING MONEY OR PROPERTY BY
MEANS OF FALSE OR FRAUDULENT
PRETENSES, REPRESENTATIONS, OR
PROMISES . . . FOR THE PURPOSE OF
EXECUTING SUCH SCHEME OR
ARTIFICE OR ATTEMPTING TO DO SO,
PLACES IN ANY POST OFFICE OR
AUTHORIZED DEPOSITORY FOR MAIL
MATTER, ANY MATTER OR THING
WHATEVER TO BE SENT OR DELIVERED**

BY THE POSTAL SERVICE, OR DEPOSITS
OR CAUSES TO BE DEPOSITED ANY
MATTER OR THING WHATEVER TO BE
SENT OR DELIVERED BY ANY PRIVATE
OR COMMERCIAL INTERSTATE
CARRIER . . . OR KNOWINGLY CAUSES
TO BE DELIVERED BY MAIL OR SUCH
CARRIER ACCORDING TO THE
DIRECTION THEREON . . . ANY MATTER
OR THING, SHALL BE [GUILTY OF A
CRIME].

ELEMENTS OF THE OFFENSE

THE ELEMENTS OF MAIL FRAUD ARE AS FOLLOWS:
FIRST, THAT THERE WAS A SCHEME OR ARTIFICE TO
DEFRAUD OR TO OBTAIN MONEY OR PROPERTY BY
MATERIALLY FALSE AND FRAUDULENT PRETENSES,
REPRESENTATIONS OR PROMISES;

SECOND, THAT THE DEFENDANT KNOWINGLY AND
WILLFULLY PARTICIPATED IN THE SCHEME OR ARTIFICE
TO DEFRAUD, WITH KNOWLEDGE OF ITS FRAUDULENT
NATURE AND WITH SPECIFIC INTENT TO DEFRAUD; AND

THIRD, THAT IN EXECUTION OF THAT SCHEME, THE
DEFENDANT USED OR CAUSED THE USE OF THE MAILS OR
A COMMERCIAL INTERSTATE CARRIER.

THESE ELEMENTS ARE TO BE UNDERSTOOD IN
PRECISELY THE SAME WAY AS I JUST INSTRUCTED YOU
AS TO THOSE ELEMENTS WITH RESPECT TO WIRE FRAUD,
EXCEPT THAT THE DEFENDANT IS CHARGED WITH USING
THE MAILS OR A COMMERCIAL INTERSTATE CARRIER
SUCH AS FEDEX, UPS, OR DHL, AS OPPOSED TO
INTERSTATE WIRES, IN FURTHERANCE OF THE SCHEME.

COUNT 1: CONSPIRACY TO COMMIT MAIL FRAUD OR

WIRE FRAUD

**COUNT ONE OF THE INDICTMENT CHARGES THE
DEFENDANT WITH CONSPIRACY TO COMMIT MAIL
FRAUD OR WIRE FRAUD. COUNT ONE READS IN
SUBSTANTIAL PART AS FOLLOWS:**

**IN OR ABOUT AND BETWEEN AUGUST 2010 AND JUNE
2013, BOTH DATES BEING APPROXIMATE AND INCLUSIVE,
WITHIN THE EASTERN DISTRICT OF NEW YORK AND
ELSEWHERE, THE DEFENDANT DARIUS XAVIER JOHNSON,
TOGETHER WITH OTHERS, DID KNOWINGLY AND
INTENTIONALLY CONSPIRE TO DEVISE A SCHEME AND
ARTIFICE TO DEFRAUD CONSTRUCTION CONTRACTORS
AND SUBCONTRACTORS TO OBTAIN MONEY AND**

**PROPERTY FROM THEM BY MEANS OF MATERIALLY
FALSE AND FRAUDULENT PRETENSES,
REPRESENTATIONS, AND PROMISES, AND FOR THE
PURPOSE OF EXECUTING SUCH SCHEME AND ARTIFICE,
TO (A) CAUSE TO BE DELIVERED MATTER AND THINGS BY
THE UNITED STATES POSTAL SERVICE AND OTHER
PRIVATE AND COMMERCIAL INTERSTATE CARRIERS
ACCORDING TO THE DIRECTIONS THEREON, AND (B)
TRANSMIT AND CAUSE TO BE TRANSMITTED, BY MEANS
OF WIRE COMMUNICATION IN INTERSTATE COMMERCE,
WRITINGS, SIGNS, SIGNALS, PICTURES, AND SOUNDS.**

**I HAVE ALREADY INSTRUCTED YOU AS TO
CONSPIRACY, WIRE FRAUD, AND MAIL FRAUD**

GENERALLY. THOSE SAME INSTRUCTIONS APPLY TO
COUNT ONE.

AS A REMINDER, THE ELEMENTS OF WIRE FRAUD
AND MAIL FRAUD ARE:

FIRST, THAT THERE WAS A SCHEME OR ARTIFICE TO
DEFRAUD OR TO OBTAIN MONEY OR PROPERTY BY
MATERIALLY FALSE AND FRAUDULENT PRETENSES,
REPRESENTATIONS OR PROMISES;

SECOND, THAT THE DEFENDANT KNOWINGLY AND
WILLFULLY PARTICIPATED IN THE SCHEME OR ARTIFICE
TO DEFRAUD, WITH KNOWLEDGE OF ITS FRAUDULENT
NATURE AND WITH SPECIFIC INTENT TO DEFRAUD; AND

THIRD, THAT IN EXECUTION OF THAT SCHEME, THE
DEFENDANT USED OR CAUSED THE USE OF INTERSTATE
WIRES, THE MAILS OR A COMMERCIAL INTERSTATE
CARRIER.

**COUNT ONE DOES NOT ALLEGE THAT WIRE FRAUD
OR MAIL FRAUD WAS ACTUALLY COMMITTED, BUT THAT
THE DEFENDANT CONSPIRED TO COMMIT WIRE FRAUD
OR MAIL FRAUD. TO PROVE THAT THE DEFENDANT
COMMITTED THE CRIME CHARGED IN COUNT ONE, THE
GOVERNMENT MUST PROVE EACH OF THE FOLLOWING
ELEMENTS BEYOND A REASONABLE DOUBT:**

**FIRST, THAT TWO OR MORE PERSONS ENTERED INTO
THE CHARGED CONSPIRACY; AND
SECOND, THAT THE DEFENDANT KNOWINGLY AND
WILLFULLY JOINED AND PARTICIPATED IN THE
CONSPIRACY.**

AIDING AND ABETTING GENERALLY

**COUNTS TWO AND THREE OF THE INDICTMENT,
WHICH I WILL READ TO YOU SHORTLY, CHARGE THE
DEFENDANT WITH WIRE FRAUD, AS WELL AS AIDING AND
ABETTING THE COMMISSION OF WIRE FRAUD.**

**AIDING AND ABETTING IS DEFINED UNDER FEDERAL
LAW IN TITLE 18, U.S.C. SECTION 2 WHICH PROVIDES, IN
PERTINENT PART, THE FOLLOWING:**

**WHOEVER COMMITS AN OFFENSE
AGAINST THE UNITED STATES OR AIDS,
ABETS, COUNSELS, COMMANDS,
INDUCES OR PROCURES ITS
COMMISSION, IS PUNISHABLE AS A
PRINCIPAL.**

**UNDER THE AIDING AND ABETTING STATUTE, IT IS
NOT NECESSARY FOR THE GOVERNMENT TO SHOW THAT
THE DEFENDANT HIMSELF PHYSICALLY COMMITTED
THE CRIME WITH WHICH HE IS CHARGED IN ORDER FOR
YOU TO FIND THE DEFENDANT GUILTY. A PERSON WHO
AIDS OR ABETS ANOTHER TO COMMIT AN OFFENSE IS
JUST AS GUILTY OF THAT OFFENSE AS IF HE COMMITTED
IT HIMSELF.**

**ACCORDINGLY, YOU MAY FIND THE DEFENDANT
GUILTY OF THE OFFENSE CHARGED IF YOU FIND BEYOND
A REASONABLE DOUBT THAT THE GOVERNMENT HAS
PROVEN THAT ANOTHER PERSON ACTUALLY
COMMITTED THE OFFENSE WITH WHICH THE
DEFENDANT IS CHARGED, AND THAT THE DEFENDANT**

AIDED OR ABETTED THAT PERSON IN THE COMMISSION
OF THE OFFENSE.

AS YOU CAN SEE, THE FIRST REQUIREMENT IS THAT
YOU FIND THAT ANOTHER PERSON HAS COMMITTED THE
CRIME CHARGED. OBVIOUSLY, NO ONE CAN BE
CONVICTED OF AIDING AND ABETTING THE CRIMINAL
ACTS OF ANOTHER IF NO CRIME WAS COMMITTED BY
THE OTHER PERSON IN THE FIRST PLACE. BUT IF YOU DO
FIND THAT A CRIME WAS COMMITTED, THEN YOU MUST
CONSIDER WHETHER THE DEFENDANT AIDED OR
ABETTED THE COMMISSION OF THAT CRIME.

IN ORDER TO AID OR ABET ANOTHER TO COMMIT A
CRIME, IT IS NECESSARY THAT THE DEFENDANT
WILLFULLY AND KNOWINGLY ASSOCIATE HIMSELF IN

**SOME WAY WITH THE CRIME, AND THAT HE
PARTICIPATE IN THE CRIME BY DOING SOME ACT TO
HELP MAKE THE CRIME SUCCEED.**

**TO ESTABLISH THAT THE DEFENDANT
PARTICIPATED IN THE COMMISSION OF THE CRIME, THE
GOVERNMENT MUST PROVE THAT THE DEFENDANT
ENGAGED IN SOME AFFIRMATIVE CONDUCT OR OVERT
ACT FOR THE SPECIFIC PURPOSE OF BRINGING ABOUT
THAT CRIME.**

**PARTICIPATION IN A CRIME IS WILLFUL IF DONE
VOLUNTARILY AND INTENTIONALLY, AND WITH THE
SPECIFIC INTENT TO DO SOMETHING WHICH THE LAW
FORBIDS OR WITH THE SPECIFIC INTENT TO FAIL TO DO
SOMETHING THE LAW REQUIRES TO BE DONE; THAT IS**

**TO SAY, WITH A BAD PURPOSE EITHER TO DISOBEY OR
DISREGARD THE LAW.**

**THE MERE PRESENCE OF A DEFENDANT WHERE A
CRIME IS BEING COMMITTED, EVEN COUPLED WITH
KNOWLEDGE BY THE DEFENDANT THAT A CRIME IS
BEING COMMITTED, OR MERELY ASSOCIATING WITH
OTHERS WHO WERE COMMITTING A CRIME IS NOT
SUFFICIENT TO ESTABLISH AIDING AND ABETTING. ONE
WHO HAS NO KNOWLEDGE THAT A CRIME IS BEING
COMMITTED OR IS ABOUT TO BE COMMITTED BUT
INADVERTENTLY DOES SOMETHING THAT AIDS IN THE
COMMISSION OF THAT CRIME IS NOT AN AIDER AND
ABETTOR. AN AIDER AND ABETTOR MUST KNOW THAT
THE CRIME IS BEING COMMITTED AND ACT IN A WAY**

**WHICH IS INTENDED TO BRING ABOUT THE SUCCESS OF
THE CRIMINAL VENTURE.**

**ANOTHER WAY OF AIDING AND ABETTING A CRIME
IS BY WILLFULLY CAUSING A CRIME. SECTION 2(B) OF
THE AIDING AND ABETTING STATUTE READS AS
FOLLOWS:**

**WHOEVER WILLFULLY CAUSES AN ACT
TO BE DONE WHICH, IF DIRECTLY
PERFORMED BY HIM, WOULD BE AN
OFFENSE AGAINST THE UNITED
STATES, IS PUNISHABLE AS A
PRINCIPAL.**

**WHAT DOES THE TERM “WILLFULLY CAUSED”
MEAN? IT DOES NOT MEAN THAT THE DEFENDANT**

HIMSELF NEED HAVE PHYSICALLY COMMITTED THE CRIME OR SUPERVISED OR PARTICIPATED IN THE ACTUAL CRIMINAL CONDUCT CHARGED IN THE INDICTMENT.

THE MEANING OF THE TERM "WILLFULLY CAUSED" CAN BE FOUND IN THE ANSWERS TO THE FOLLOWING QUESTIONS:

DID THE DEFENDANT INTEND FOR THE CRIME TO OCCUR?

DID THE DEFENDANT INTENTIONALLY CAUSE ANOTHER PERSON TO COMMIT THE CRIME?

IF YOU ARE PERSUADED BEYOND A REASONABLE DOUBT THAT THE ANSWER TO BOTH OF THESE QUESTIONS IS "YES," THEN THE DEFENDANT IS GUILTY

**OF THE CRIME CHARGED JUST AS IF HE HIMSELF HAD
ACTUALLY COMMITTED IT.**

COUNTS 2 AND 3: WIRE FRAUD

COUNTS TWO AND THREE OF THE INDICTMENT

CHARGES THE DEFENDANT WITH WIRE FRAUD. THESE

COUNTS READ IN SUBSTANTIAL PART AS FOLLOWS:

ON OR ABOUT THE DATES SET FORTH BELOW,

WITHIN THE EASTERN DISTRICT OF NEW YORK AND

ELSEWHERE, THE DEFENDANT DARIUS XAVIER JOHNSON,

TOGETHER WITH OTHERS, DID KNOWINGLY AND

INTENTIONALLY DEVISE A SCHEME AND ARTIFICE TO

DEFRAUD AMERICAN ARCHITECTURAL, AND TO OBTAIN

MONEY AND PROPERTY FROM AMERICAN

ARCHITECTURAL BY MEANS OF MATERIALLY FALSE AND

FRAUDULENT PRETENSES, REPRESENTATIONS, AND

PROMISES, AND FOR THE PURPOSE OF EXECUTING SUCH

**SCHEME AND ARTIFICE, AND ATTEMPTING TO DO SO, DID
TRANSMIT AND CAUSE TO BE TRANSMITTED, BY MEANS
OF WIRE COMMUNICATION IN INTERSTATE COMMERCE,
WRITINGS, SIGNS, SIGNALS, PICTURES, AND SOUNDS AS
FOLLOWS.**

**ON COUNT TWO, ON THE APPROXIMATE DATE OF
APRIL 11, 2011, A WIRE TRANSFER IN THE AMOUNT OF
\$73,534 FROM A JP MORGAN CHASE BANK ACCOUNT HELD
IN THE NAME OF KRISILIS LLC, IN CHICAGO, ILLINOIS TO
AN HSBC ACCOUNT HELD IN THE NAME OF JOHNSON'S
LAW FIRM, IN BROOKLYN, NEW YORK.**

**ON COUNT THREE, ON THE APPROXIMATE DATE OF
APRIL 13, 2011, A WIRE TRANSFER IN THE AMOUNT OF
\$20,752 FROM A JP MORGAN CHASE BANK ACCOUNT HELD**

IN THE NAME OF KRISILIS LLC, IN CHICAGO, ILLINOIS TO
AN HSBC ACCOUNT HELD IN THE NAME OF JOHNSON'S
LAW FIRM, IN BROOKLYN, NEW YORK.

I HAVE ALREADY INSTRUCTED YOU AS TO WIRE
FRAUD GENERALLY. THOSE SAME INSTRUCTIONS APPLY
TO COUNTS TWO AND THREE.

AS A REMINDER, THE ELEMENTS OF WIRE FRAUD
ARE:

FIRST, THAT THERE WAS A SCHEME OR ARTIFICE TO
DEFRAUD OR TO OBTAIN MONEY OR PROPERTY BY
MATERIALLY FALSE AND FRAUDULENT PRETENSES,
REPRESENTATIONS OR PROMISES;

SECOND, THAT THE DEFENDANT KNOWINGLY AND
WILLFULLY PARTICIPATED IN THE SCHEME OR ARTIFICE

TO DEFRAUD, WITH KNOWLEDGE OF ITS FRAUDULENT
NATURE AND WITH SPECIFIC INTENT TO DEFRAUD; AND

THIRD, THAT IN EXECUTION OF THAT SCHEME, THE
DEFENDANT USED OR CAUSED THE USE OF INTERSTATE
WIRES.

THE DEFENDANT IS ALSO CHARGED WITH AIDING
AND ABETTING COUNTS TWO AND THREE. I HAVE
PREVIOUSLY INSTRUCTED YOU ON THE ELEMENTS OF
AIDING AND ABETTING, WHICH YOU SHOULD CONSIDER
EVEN IF YOU FIND THAT THE DEFENDANT DID NOT
HIMSELF COMMIT WIRE FRAUD. AS A REMINDER, YOU
MAY FIND THE DEFENDANT GUILTY OF THE OFFENSE
CHARGED IF THE GOVERNMENT PROVES, BEYOND A
REASONABLE DOUBT, THAT ANOTHER PERSON
ACTUALLY COMMITTED THE CHARGED OFFENSE AND

**THE DEFENDANT AIDED OR ABETTED THAT PERSON IN
THE COMMISSION OF THE CHARGED OFFENSE, MEANING
THAT THE DEFENDANT WILLFULLY AND KNOWINGLY
ASSOCIATED HIMSELF IN SOME WAY WITH THE CRIME,
AND THAT HE PARTICIPATED IN THE CRIME BY DOING
SOME ACT TO HELP MAKE THE CRIME SUCCEED.**

COUNT 4: CONSPIRACY TO COMMIT MONEY LAUNDERING

THE FINAL COUNT OF THE INDICTMENT CHARGES

THE DEFENDANT WITH CONSPIRING TO ENGAGE IN

MONEY LAUNDERING. COUNT FOUR READS IN

SUBSTANTIAL PART AS FOLLOWS:

IN OR ABOUT AND BETWEEN AUGUST 2010 AND JUNE

2013, BOTH DATES BEING APPROXIMATE AND INCLUSIVE,

WITHIN THE EASTERN DISTRICT OF NEW YORK AND

ELSEWHERE, THE DEFENDANT DARIUS XAVIER JOHNSON,

TOGETHER WITH OTHERS, DID KNOWINGLY AND

INTENTIONALLY CONSPIRE TO ENGAGE IN ONE OR MORE

MONETARY TRANSACTIONS IN AND AFFECTING

INTERSTATE COMMERCE IN CRIMINALLY DERIVED

PROPERTY OF A VALUE GREATER THAN \$10,000 THAT

WAS DERIVED FROM SPECIFIED UNLAWFUL ACTIVITY,

TO WIT: MAIL FRAUD AND WIRE FRAUD.

THE RELEVANT STATUTE FOR COUNT FOUR IS

SECTION 1956(H) OF TITLE 18 OF THE UNITED STATES

CODE, WHICH PROVIDES, IN PERTINENT PART, THAT:

"ANY PERSON WHO CONSPIRES TO COMMIT

[MONEY LAUNDERING]. . . SHALL [HAVE

COMMITTED AN OFFENSE]."

COUNT 4 – CONSPIRACY

I HAVE ALREADY EXPLAINED THE LAW OF CONSPIRACY, AND THOSE INSTRUCTIONS APPLY EQUALLY TO COUNT FOUR. THUS, IN ORDER TO PROVE THE CRIME OF CONSPIRACY TO COMMIT MONEY LAUNDERING CHARGED IN COUNT FOUR, THE GOVERNMENT MUST ESTABLISH THE FOLLOWING ELEMENTS OF THE CRIME BEYOND A REASONABLE DOUBT.

FIRST, THAT TWO OR MORE PERSONS ENTERED INTO THE CHARGED CONSPIRACY; AND **SECOND**, THAT THE DEFENDANT KNOWINGLY AND WILLFULLY JOINED AND PARTICIPATED IN THE CONSPIRACY.

**THE DETAILED INSTRUCTIONS THAT I PROVIDED TO
YOU ON THE ELEMENTS OF CONSPIRACY APPLY
EQUALLY HERE, EVEN THOUGH I WILL NOT REPEAT
THEM.**

**COUNT FOUR – 18 U.S.C. § 1957 (ENGAGING IN MONETARY
TRANSACTIONS IN PROPERTY DERIVED FROM SPECIFIED
UNLAWFUL ACTIVITY)**

**TO DETERMINE WHETHER THE GOVERNMENT HAS
PROVED BEYOND A REASONABLE DOUBT THAT THE
DEFENDANT ENGAGED IN AN ILLEGAL MONEY
LAUNDERING CONSPIRACY, YOU MUST ALSO
UNDERSTAND THE CRIMES THAT COUNT FOUR CHARGES
HIM WITH AGREEING TO COMMIT, WHICH CAN BE
FOUND AT SECTION 1957 OF TITLE 18 OF THE UNITED
STATES CODE.**

**SECTION 1957 MAKES IT A CRIME TO KNOWINGLY
ENGAGE IN A MONETARY TRANSACTION IN CRIMINALLY
DERIVED PROPERTY OF A VALUE GREATER THAN \$10,000,
WHAT HAS BEEN REFERRED TO AS “MONEY**

LAUNDERING." SPECIFICALLY, SECTION 1957 PROVIDES:

WHOEVER . . . KNOWINGLY ENGAGES . . .

IN A MONETARY TRANSACTION IN

CRIMINALLY DERIVED PROPERTY THAT

IS OF A VALUE GREATER THAN \$10,000

AND IS DERIVED FROM SPECIFIED

UNLAWFUL ACTIVITY [AND DOES SO

EITHER] IN THE UNITED STATES OR IN

THE SPECIAL MARITIME AND

TERRITORIAL JURISDICTION OF THE

UNITED STATES . . . [COMMITS A CRIME].

I WILL NOW GIVE YOU ADDITIONAL INSTRUCTIONS

REGARDING THE ELEMENTS OF MONEY LAUNDERING.

COUNT FOUR – ELEMENTS OF THE OFFENSE

**IN ORDER TO PROVE THE CRIME OF ENGAGING IN
MONETARY TRANSACTIONS IN PROPERTY DERIVED FROM
SPECIFIED UNLAWFUL ACTIVITY IN VIOLATION OF
SECTION 1957, THE GOVERNMENT MUST ESTABLISH
BEYOND A REASONABLE DOUBT EACH OF THE
FOLLOWING ELEMENTS:**

**FIRST, THAT THE DEFENDANT ENGAGED IN A
MONETARY TRANSACTION IN OR AFFECTING
INTERSTATE COMMERCE.**

**SECOND, THAT THE MONETARY TRANSACTION
INVOLVED CRIMINALLY DERIVED PROPERTY OF A
VALUE GREATER THAN \$10,000.**

THIRD, THAT THE PROPERTY WAS DERIVED FROM

SPECIFIED UNLAWFUL ACTIVITY.

FOURTH, THAT THE DEFENDANT ACTED

KNOWINGLY, THAT IS, WITH KNOWLEDGE THAT THE

TRANSACTION INVOLVED PROCEEDS OF A CRIMINAL

OFFENSE.

FIFTH, THAT THE TRANSACTION TOOK PLACE IN

THE UNITED STATES.

FIRST ELEMENT – ENGAGING IN A MONETARY TRANSACTION

THE FIRST ELEMENT THAT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT IS THAT THE DEFENDANT ENGAGED IN A MONETARY TRANSACTION IN OR AFFECTING INTERSTATE COMMERCE.

THE TERM “MONETARY TRANSACTION” MEANS THE DEPOSIT, WITHDRAWAL, TRANSFER, OR EXCHANGE, IN OR AFFECTING INTERSTATE OR FOREIGN COMMERCE, OF FUNDS OR A MONETARY INSTRUMENT BY, THROUGH, OR TO A FINANCIAL INSTITUTION.

THE TERM “INTERSTATE OR FOREIGN COMMERCE” MEANS COMMERCE BETWEEN ANY COMBINATION OF STATES, TERRITORIES, OR POSSESSIONS OF THE UNITED STATES, OR BETWEEN THE UNITED STATES AND A

FOREIGN COUNTRY.

YOU MUST FIND THAT THE TRANSACTION AFFECTED
INTERSTATE COMMERCE IN SOME WAY, HOWEVER
MINIMAL. THIS EFFECT ON INTERSTATE COMMERCE CAN
BE ESTABLISHED IN SEVERAL WAYS.

FIRST, ANY MONETARY TRANSACTION WITH A
FINANCIAL INSTITUTION INSURED BY THE FDIC AFFECTS
INTERSTATE COMMERCE, SO IF YOU FIND THAT EITHER
HSBC BANK OR JP MORGAN CHASE BANK WAS INSURED BY
THE FDIC THAT IS ENOUGH TO ESTABLISH THAT THE
TRANSACTION AFFECTED INTERSTATE COMMERCE.

SECOND, IF YOU FIND THAT THE SOURCE OF THE
FUNDS USED IN THE TRANSACTION AFFECTED
INTERSTATE COMMERCE, THAT IS SUFFICIENT AS WELL.

THIRD, IF YOU FIND THAT THE TRANSACTION ITSELF
INVOLVED AN INTERSTATE TRANSFER OF FUNDS, THAT
WOULD ALSO BE SUFFICIENT.

HERE, THE PARTIES HAVE STIPULATED THAT THE
MONETARY TRANSACTIONS AT ISSUE AFFECTED
INTERSTATE COMMERCE IN SOME WAY. ACCORDINGLY,
YOU SHOULD REGARD THAT STIPULATED FACT AS TRUE.

**SECOND ELEMENT – TRANSACTION INVOLVED
CRIMINALLY DERIVED PROPERTY**

**THE SECOND ELEMENT THAT THE GOVERNMENT
MUST PROVE BEYOND A REASONABLE DOUBT IS THAT
THE MONETARY TRANSACTION INVOLVED CRIMINALLY
DERIVED PROPERTY HAVING A VALUE IN EXCESS OF
\$10,000.**

**THE TERM “CRIMINALLY DERIVED PROPERTY”
MEANS ANY PROPERTY CONSTITUTING, OR DERIVED
FROM, PROCEEDS OBTAINED FROM A CRIMINAL
OFFENSE.**

**THE TERM “PROCEEDS” MEANS ANY PROPERTY
DERIVED FROM OR OBTAINED OR RETAINED, DIRECTLY
OR INDIRECTLY, THROUGH SOME FORM OF UNLAWFUL**

ACTIVITY, INCLUDING THE GROSS RECEIPTS OF SUCH

ACTIVITY.

THE GOVERNMENT IS NOT REQUIRED TO PROVE

THAT ALL OF THE PROPERTY INVOLVED IN THE

TRANSACTION WAS CRIMINALLY DERIVED PROPERTY.

HOWEVER, THE GOVERNMENT MUST PROVE THAT MORE

THAN \$10,000 OF THE PROPERTY INVOLVED WAS

CRIMINALLY DERIVED PROPERTY.

**THIRD ELEMENT – PROPERTY DERIVED FROM
SPECIFIED UNLAWFUL ACTIVITY**

**THE THIRD ELEMENT THAT THE GOVERNMENT
MUST PROVE BEYOND A REASONABLE DOUBT IS THAT
THE DEFENDANT KNEW THAT THE PROPERTY INVOLVED
IN THE FINANCIAL TRANSACTION WAS THE PROCEEDS
OF SOME FORM OF UNLAWFUL ACTIVITY.**

**I INSTRUCT YOU THAT THIS ELEMENT REFERS TO A
REQUIREMENT THAT THE DEFENDANT KNEW THE
PROPERTY INVOLVED IN THE TRANSACTION
REPRESENTED PROCEEDS FROM SOME FORM, THOUGH
NOT NECESSARILY WHICH FORM, OF ACTIVITY THAT
CONSTITUTES A CRIMINAL OFFENSE UNDER STATE OR
FEDERAL LAW. I INSTRUCT YOU AS A MATTER OF LAW**

**THAT MAIL FRAUD AND WIRE FRAUD ARE EACH
CRIMINAL OFFENSES.**

FOURTH ELEMENT – KNOWLEDGE

**THE FOURTH ELEMENT THAT THE GOVERNMENT
MUST PROVE BEYOND A REASONABLE DOUBT IS THAT
THE DEFENDANT KNOWINGLY ENGAGED IN AN
UNLAWFUL MONETARY TRANSACTION, AS DISCUSSED
ABOVE.**

**I INSTRUCT YOU THAT IN A PROSECUTION FOR AN
OFFENSE UNDER THIS SECTION, THE GOVERNMENT IS
NOT REQUIRED TO PROVE THAT THE DEFENDANT KNEW
THE PARTICULAR OFFENSE FROM WHICH THE
CRIMINALLY DERIVED PROPERTY WAS DERIVED.

HOWEVER, THE GOVERNMENT MUST PROVE BEYOND A
REASONABLE DOUBT THAT THE TRANSACTION
INVOLVED CRIMINALLY DERIVED PROPERTY, WHICH, I**

**REMIND YOU, MEANS ANY PROPERTY CONSTITUTING, OR
DERIVED FROM, PROCEEDS OBTAINED FROM A
CRIMINAL OFFENSE.**

**IF YOU FIND THAT THE GOVERNMENT HAS
ESTABLISHED, BEYOND A REASONABLE DOUBT, THAT
THE DEFENDANT KNEW THAT THE TRANSACTION
INVOLVED PROPERTY DERIVED FROM A CRIMINAL
OFFENSE, THEN THIS ELEMENT IS SATISFIED.**

**FIFTH ELEMENT – TRANSACTION TOOK PLACE IN THE
UNITED STATES**

**THE FIFTH ELEMENT WHICH THE GOVERNMENT
MUST PROVE BEYOND A REASONABLE DOUBT IS THAT
THE TRANSACTION TOOK PLACE IN THE UNITED STATES.**

GOOD FAITH

GOOD FAITH IS A COMPLETE DEFENSE TO THE CHARGES IN THIS CASE.

IF THE DEFENDANT BELIEVED IN GOOD FAITH THAT HE WAS ACTING PROPERLY, EVEN IF HE WAS MISTAKEN IN THAT BELIEF, AND EVEN IF OTHERS WERE INJURED BY HIS CONDUCT, THERE WOULD BE NO CRIME.

THE BURDEN OF ESTABLISHING LACK OF GOOD FAITH AND CRIMINAL INTENT RESTS ON THE GOVERNMENT. A DEFENDANT IS UNDER NO BURDEN TO PROVE HIS GOOD FAITH; RATHER, THE GOVERNMENT MUST PROVE BAD FAITH OR KNOWLEDGE OF FALSITY BEYOND A REASONABLE DOUBT.

INTRODUCTION TO DELIBERATIONS AND SELECTING A

FOREPERSON

**YOU ARE ABOUT TO GO INTO THE JURY ROOM,
MEMBERS OF THE JURY, TO BEGIN YOUR
DELIBERATIONS. THAT BRINGS US TO THE THIRD AND
FINAL PART OF MY CHARGE WHICH PROVIDES SOME
GENERAL RULES REGARDING YOUR DELIBERATIONS.**

**IN ORDER THAT YOUR DELIBERATIONS MAY
PROCEED IN AN ORDERLY FASHION, FIRST YOU SHOULD
HAVE A FOREPERSON. TRADITIONALLY, JUROR NUMBER
ONE ACTS AS FOREPERSON. OF COURSE, HIS OR HER
VOTE IS ENTITLED TO NO GREATER WEIGHT THAN THAT
OF ANY OTHER JUROR.**

DELIBERATIONS

**KEEP IN MIND THAT NOTHING I HAVE SAID IN THESE
INSTRUCTIONS IS INTENDED TO SUGGEST TO YOU IN ANY
WAY WHAT I THINK YOUR VERDICT SHOULD BE. THAT IS
ENTIRELY FOR YOU TO DECIDE.**

**BY WAY OF REMINDER, I CHARGE YOU ONCE AGAIN
THAT IT IS YOUR RESPONSIBILITY TO JUDGE THE FACTS
IN THIS CASE FROM THE EVIDENCE PRESENTED DURING
THE TRIAL AND TO APPLY THE LAW AS I HAVE GIVEN IT
TO YOU TO THE FACTS AS YOU FIND THEM FROM THE
EVIDENCE.**

**WHEN YOU RETIRE, IT IS YOUR DUTY TO DISCUSS
THE CASE FOR THE PURPOSE OF REACHING AGREEMENT
IF YOU CAN DO SO. EACH OF YOU MUST DECIDE THE**

CASE FOR YOURSELF, BUT SHOULD ONLY DO SO AFTER
CONSIDERING ALL THE EVIDENCE, LISTENING TO THE
VIEWS OF YOUR FELLOW JURORS, AND DISCUSSING IT
FULLY. IT IS IMPORTANT THAT YOU REACH A VERDICT
IF YOU CAN DO SO CONSCIENTIOUSLY. YOU SHOULD NOT
HESITATE TO RECONSIDER YOUR OPINIONS FROM TIME
TO TIME AND TO CHANGE THEM IF YOU ARE CONVINCED
THAT THEY ARE WRONG. HOWEVER, DO NOT
SURRENDER AN HONEST CONVICTION AS TO WEIGHT
AND EFFECT OF THE EVIDENCE SIMPLY TO ARRIVE AT A
VERDICT.

UNANIMOUS VERDICT

ANY VERDICT YOU REACH MUST BE UNANIMOUS.

THAT IS, WITH RESPECT TO EACH COUNT, YOU MUST ALL

AGREE AS TO WHETHER YOUR VERDICT IS GUILTY OR

NOT GUILTY AS TO THAT COUNT.

TIME AND PLACE OF DELIBERATIONS

DELIBERATIONS ARE TO TAKE PLACE ONLY IN THE JURY ROOM. YOU WILL NOT DISCUSS THIS CASE WITH ANYONE OUTSIDE THE JURY ROOM. AND THAT INCLUDES YOUR FELLOW JURORS. YOU WILL ONLY DISCUSS THE CASE WHEN ALL 12 DELIBERATING JURORS ARE TOGETHER, IN THE JURY ROOM, WITH NO ONE ELSE PRESENT, BEHIND THE CLOSED DOOR. AT NO OTHER TIME IS THERE TO BE ANY DISCUSSION ABOUT THE MERITS OF THE CASE. PERIOD.

NO CONSIDERATION OF PUNISHMENT

**FINALLY, YOU CANNOT ALLOW A CONSIDERATION
OF THE PUNISHMENT WHICH MAY BE IMPOSED UPON
THE DEFENDANT, IF CONVICTED, TO INFLUENCE YOUR
VERDICT IN ANY WAY OR TO ENTER INTO YOUR
DELIBERATIONS.**

**REGARDLESS, THE DUTY OF IMPOSING A SENTENCE
RESTS EXCLUSIVELY WITH ME. YOUR DUTY IS TO WEIGH
THE EVIDENCE IN THE CASE AND TO DETERMINE
WHETHER THE GOVERNMENT HAS PROVEN EVERY
ELEMENT BEYOND A REASONABLE DOUBT SOLELY UPON
SUCH EVIDENCE AND UPON THE LAW WITHOUT BEING
INFLUENCED BY ANY ASSUMPTION, CONJECTURE,**

**SYMPATHY, OR INFERENCE NOT WARRANTED BY THE
FACTS.**

NO COMMUNICATIONS RULE

**AS I AM SURE YOU CAN IMAGINE, IT IS VERY
IMPORTANT THAT YOU NOT COMMUNICATE WITH
ANYONE OUTSIDE THE JURY ROOM ABOUT YOUR
DELIBERATIONS OR ABOUT ANYTHING TOUCHING THIS
CASE. THERE IS ONLY ONE EXCEPTION TO THIS RULE. IF
IT BECOMES NECESSARY DURING YOUR DELIBERATIONS
TO COMMUNICATE WITH ME, YOU MAY SEND A NOTE,
THROUGH THE MARSHAL, SIGNED BY YOUR FOREPERSON
OR BY ONE OR MORE MEMBERS OF THE JURY. NO
MEMBER OF THE JURY SHOULD EVER ATTEMPT TO
COMMUNICATE WITH ME EXCEPT BY A SIGNED WRITING,
AND I WILL NEVER COMMUNICATE WITH ANY MEMBER
OF THE JURY ON ANY SUBJECT TOUCHING THE MERITS**

**OF THE CASE OTHER THAN IN WRITING, OR ORALLY
HERE IN OPEN COURT. IF YOU SEND ANY NOTES TO THE
COURT, DO NOT DISCLOSE ANYTHING ABOUT YOUR
DELIBERATIONS. SPECIFICALLY, DO NOT DISCLOSE TO
ANYONE— NOT EVEN TO ME— HOW THE JURY STANDS,
NUMERICALLY OR OTHERWISE, ON THE QUESTION OF
THE GUILT OR INNOCENCE OF THE DEFENDANT, UNTIL
AFTER YOU HAVE REACHED A UNANIMOUS VERDICT ON
EACH COUNT OR HAVE BEEN DISCHARGED.**

JURY RECOLLECTION AND JURY NOTES

**KEEP IN MIND, TOO, THAT IN DELIBERATIONS, THE
JURY'S RECOLLECTION GOVERNS, NOBODY ELSE'S. NOT
THE COURT'S -- IF I HAVE MADE REFERENCE TO THE
TESTIMONY -- AND NOT COUNSEL'S RECOLLECTION. IT
IS YOUR RECOLLECTION THAT MUST GOVERN DURING
YOUR DELIBERATIONS. IF NECESSARY, DURING THOSE
DELIBERATIONS, YOU MAY REQUEST BY JURY NOTE A
READING FROM THE TRIAL TRANSCRIPT THAT MAY
REFRESH YOUR RECOLLECTION.**

**PLEASE, AS BEST YOU CAN, TRY TO BE AS SPECIFIC
AS POSSIBLE IN YOUR REQUESTS FOR READ BACKS; IN
OTHER WORDS, IF YOU ARE INTERESTED ONLY IN A
PARTICULAR PART OF A WITNESS'S TESTIMONY, PLEASE**

INDICATE THAT TO US. IT MAY TAKE SOME TIME FOR US
TO LOCATE THE TESTIMONY IN THE TRANSCRIPTS, SO
PLEASE BE PATIENT. AND, AS A GENERAL MATTER, IF
THERE IS EVER A DELAY IN RESPONDING TO A JURY
NOTE, PLEASE UNDERSTAND THERE IS A REASON FOR IT.
NONE OF US GOES ANYWHERE. AS SOON AS A JURY NOTE
IS DELIVERED TO THE COURT BY THE MARSHAL, WE
TURN OUR ATTENTION TO IT IMMEDIATELY.

IN THE SAME WAY, IF YOU HAVE ANY QUESTIONS
ABOUT THE APPLICABLE LAW OR YOU WANT A FURTHER
EXPLANATION FROM ME, SEND ME A NOTE. WE WILL
PROVIDE A RESPONSE AS SOON AS WE CAN.

COMPLETION OF VERDICT SHEET

**I HAVE PROVIDED THE JURY WITH A VERDICT
SHEET, WHICH IS SELF-EXPLANATORY. NEEDLESS TO
SAY, HOWEVER, IF YOU HAVE ANY QUESTIONS ABOUT
THE VERDICT SHEET, DO NOT HESITATE TO SEND THE
COURT A NOTE ASKING FOR FURTHER INSTRUCTIONS.

WITH RESPECT TO EACH COUNT, YOU ARE TO
RESOLVE INDIVIDUALLY THE ISSUE OF WHETHER THE
GOVERNMENT HAS ESTABLISHED BEYOND A
REASONABLE DOUBT THE ESSENTIAL ELEMENTS OF THE
OFFENSE AS I HAVE DESCRIBED THEM TO YOU. THAT IS,
YOU MUST ALL AGREE UNANIMOUSLY AS TO WHETHER
YOUR VERDICT IS GUILTY OR NOT GUILTY.**

**WHEN YOU HAVE REACHED A DECISION, HAVE THE
FOREPERSON RECORD THE ANSWERS, SIGN THE VERDICT
FORM, AND PUT THE DATE ON IT -- AND NOTIFY THE
MARSHAL BY NOTE THAT YOU HAVE REACHED A
VERDICT. BRING THE COMPLETED VERDICT SHEET WITH
YOU WHEN SUMMONED BY THE COURT.**

BIAS

**YOU MUST NOT BE INFLUENCED BY SYMPATHY,
PREJUDICE, OR PUBLIC OPINION. I REMIND YOU AT THE
OUTSET THAT EACH OF YOU HAS UNDERTAKEN A
SOLEMN OBLIGATION, A SWORN OBLIGATION, TO
DECIDE THIS CASE SOLELY ON THE EVIDENCE. YOU
MUST CAREFULLY AND IMPARTIALLY CONSIDER THE
EVIDENCE, FOLLOW THE LAW AS I STATE IT, AND REACH
A JUST VERDICT, REGARDLESS OF THE CONSEQUENCES.**

JUROR'S OATH OF DUTY

**AS YOU BEGIN YOUR DELIBERATIONS, REMEMBER
YOUR OATH SUMS UP YOUR DUTY – AND THAT IS –
WITHOUT FEAR OR FAVOR TO ANY PERSON OR PARTY,
YOU WILL WELL AND TRULY TRY THE ISSUES IN THIS
CASE ACCORDING TO THE EVIDENCE GIVEN TO YOU IN
COURT AND THE LAWS OF THE UNITED STATES.**

[INTENTIONALLY LEFT BLANK]

PAUSE FOR EXCEPTIONS TO CHARGE

**MEMBERS OF THE JURY, I ASK YOUR PATIENCE FOR
A FEW MOMENTS LONGER. IT MAY BE NECESSARY FOR
ME TO SPEND A FEW MOMENTS WITH COUNSEL AND THE
REPORTER AT THE SIDE BAR. IF SO, I WILL ASK YOU TO
REMAIN PATIENTLY IN THE BOX, WITHOUT SPEAKING TO
EACH OTHER, AND WE WILL RETURN IN JUST A MOMENT
TO SUBMIT THE CASE TO YOU.**

**THANK YOU AGAIN FOR YOUR TIME AND
ATTENTIVENESS.**